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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 264

THE UNITED STATES OF AMERICA, APPELLANT

vs.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JULY 29, 1932

(36961)

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2 [Omitted.]

3 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity, No. 10067

UNITED STATES OF AMERICA, PETITIONER,

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, respondent.

Petition

Filed Oct. 3, 1930

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The United States of America, by its attorney for the Northern District of Illinois, acting for and under the direction of the Attorney General of the United States, at the request of the Interstate Commerce Commission of the United States, made under authority of section 12 (1) of the interstate commerce act, approved February 4, 1887 (24 Stat. L. 379), as amended (25 Stat. L. 855). (U. S. C., Tit. 49, § 12, par. 1), now comes and brings this proceeding by way of a petition for an injunction against the respondent, Chicago North Shore and Milwaukee Railroad Company, enjoining and restraining it from issuing any capital stock, bonds, or other evidence of indebtedness, collectively termed "securities," and/or from assuming any obligation or liability as guarantor, endorser, surety or otherwise, in respect of the securities of any other person, natural or artificial, unless and until it shall have first applied for and obtained from the Interstate Commerce Commission an order, pursuant to and as required by Section 20a of said Interstate Commerce Act (41 Stat. L. 494; U. S. C., Tit. 49, § 20a) authorizing the

4 issuance of such securities and/or the assumption of such obligation or liability.

And your petitioner respectfully shows and alleges:

I

Respondent is, and at all times herein mentioned was, a corporation chartered, organized and existing under and by virtue of the General Railroad Laws of the State of Illinois (chapter 114 of Cahill's 1921 Illinois Revised Statutes), and is, and at all times men-

tioned herein was, a resident and inhabitant of the State of Illinois, with its principal office in Chicago, in the Northern District of Illinois.

II

Respondent is, and at all times herein mentioned was, engaged in the interstate transportation of property and passengers for hire over lines of railroad owned, controlled, and operated by it, totalling, to wit, 133.05 miles, and extending from 63d Street in the South side of Chicago, Illinois, to 6th and Michigan Streets in Milwaukee, Wisconsin, with a branch line extending from Lake Bluff, Illinois, to Mundelein, Illinois; and was, and now is, a common carrier by railroad subject to the provisions of said interstate commerce act, including the provisions of said section 20a thereof.

III

At the time respondent was incorporated, under the General Railroad Laws of the State of Illinois, on, to wit, June 8, 1923, the line of railroad operated by it extended to and from the City of Chicago, in the State of Illinois, from and to the City of Milwaukee, in the State of Wisconsin, traversing the States of Illinois and Wisconsin.

IV

On, to wit, February 1, 1925, the line of railroad of the respondent included, in addition to the aforementioned line described in Paragraph III hereof, a line of railroad extending from a point of connection with the aforementioned line at Howard Street, in the city of Chicago, State of Illinois, to Dempster Street, in the town of Niles Center, State of Illinois; and on, to wit, June 5, 1926, the respondent's line of railroad included, in addition to the hereinbefore-described lines of railroad, a line of railroad extending from a point of connection with the aforementioned lines at Dempster Street, in Niles Center, Illinois, to Chicago Junction, Illinois.

V

At all times since its organization, and particularly since, to wit, June 8, 1923, the respondent has owned and operated, and now owns and operates, a railroad facility, and conducts a railroad common carrier business similar to those operated and conducted by railroads generally, and, in particular, similar to the facilities operated and the business conducted by paralleling and/or competing railroad common carriers in that, to wit:

(a) The motive power generally used by the respondent is electricity, but it is authorized by its charter to operate its trains by steam or other power, and respondent is using, and/or has used, steam locomotives in its operation.

(b) The tracks of the respondent are located on its private right of way, with the exception of short distances in a few municipalities, aggregating approximately three miles.

(c) Respondent has acquired part of its right of way through the exercise of the power of eminent domain.

(d) Respondent operates jointly with, and over trackage leased from, a railroad, to wit, the Chicago, Milwaukee, St. Paul & Pacific Railway Company, formerly the Chicago, Milwaukee & St. Paul Railway Company.

6 (e) The road bed of respondent's line of railroad was designed and built according to general railroad standards of construction, permitting the use of standard equipment used generally by railroads.

(f) The bridges on respondent's line of railroad are designed and built according to the standards of railroad construction.

(g) The tracks of the respondent's line of railroad are standard guage, and, with the exception of approximately one mile, its rails are of standard design, and are the same kind of rails as used on railroads generally, being laid and placed on the roadbed in conformance with the general practice obtaining on railroads in general.

(h) The signals, switches, and crossing-protection devices used on the respondent's line of railroad are similar to those used on railroads generally.

(i) The tracks of the respondent's line of railroad are physically connected with railroads by interchange tracks over which carload freight traffic can be, and is, interchanged without breaking bulk.

(j) The locomotives used on the respondent's line of railroad are similar to those used on railroads using same kind of motive power.

(k) Respondent owns and uses freight cars of the same design and construction as those used on railroads generally.

(l) Respondent uses standard freight cars with which it performs freight service substantially the same as that performed by railroads paralleling and/or competing with it.

(m) Respondent's yards and sidings are similar to those of railroads generally.

(n) Respondent's stations, depots, and shops are similar to those of railroads generally.

VI

The respondent has at all times since its organization, and particularly since, to wit, June 8, 1923, operated its railroad
7 property in accordance with the same methods of operations used by railroads in that, to wit:

(a) Its corporate organization is similar to that of railroads generally.

(b) Its operations are under the supervision of men who are experienced in common carrier railroad operation.

(c) It operates its trains under train rules substantially the same as the Standard Code of Train Rules of the American Railway

Association and under methods substantially the same as used by railroads generally.

(d) It hauls freight in standard freight cars owned by railroads.

(e) Its passenger-train service is operated under the same methods as those used by competing railroads.

(f) It provides passenger service similar to that provided by paralleling and/or competing railroads.

(g) Its track and roadbed are maintained in conformance with the methods and standards of railroads.

(h) Its practice in connection with the maintenance of its equipment and repairs thereto is substantially similar to the practice of railroads generally.

VII

Respondent is a member of associations of railroads generally, to wit:

(a) American Railway Association.

(b) Western Passenger Association.

(c) Central Freight Association.

(d) Bureau for the Safe Transportation of Explosives.

(e) Western Weighing & Inspection Bureau.

VIII

Respondent is a subscriber to rules entered into and promulgated for railroads generally, to wit:

8 (a) The Code of Car Service Rules.

(b) The Code of Per Diem Rules.

(c) The Car Service and Per Diem Rules Agreement of the American Railway Association.

(d) Master Car Builders Rules.

(e) The Interchange Agreement of the American Railway Association.

(f) The Official List of Open and Prepay Stations.

(g) The Consolidated Freight Classification.

IX

Respondent files freight and passenger tariffs with the Interstate Commerce Commission and the bulk of its revenue is derived from rates and fares subject to the jurisdiction of and regulated by the Interstate Commerce Commission.

X

Respondent solicits and handles its traffic as do railroad common carriers generally, in that, to wit:

(a) It has an extensive traffic organization.

(b) By advertisements and personal solicitation through its traffic representatives, respondent competes for freight and passenger traffic

with other railroad common carriers generally, and particularly with those common carriers whose railroad lines are located in and serve the general territory served by respondent's lines.

(c) It performs express, freight, and passenger service.

(d) It interchanges carload and less-than-carload freight in interstate commerce with railroads.

(e) Its freight rates are subject to the jurisdiction of the Interstate Commerce Commission.

(f) Its passenger rates are regulated by and are subject to the jurisdiction of the Interstate Commerce Commission.

9 (g) It exchanges passes with railroads.

(h) Its freight tonnage is and has been handled largely in carload shipments.

(i) Its bills of lading, waybills, and interline waybills are the same as those used on railroads generally.

XI

At all times herein mentioned respondent was, and now is, a corporation organized for the purpose of engaging in transportation by railroad subject to the interstate commerce act within the meaning of that term as used in section 20a of the interstate commerce act. (41 Stat. L. 494, U. S. C., Tit. 49, sec. 20a.)

XII

Respondent has, since one hundred twenty (120) days after February 28, 1920, to wit, between June 20, 1923, and July 1, 1930, without first having obtained authority from the Interstate Commerce Commission as required by section 20a of the interstate commerce act, issued shares of its capital stock, bonds, and other evidence of indebtedness, collectively termed "securities," totaling more than forty-two million dollars ($42,000,000) to wit:

Capital stock:	
Common—50,000 shares, par value $100	$5,000,000.00
Preferred—6% noncumulative	7,542,200.00
7% cumulative prior line	7,940,400.00
Bonds:	
First Mortgage gold bonds—5%	4,000,000.00
First and refunding mortgage gold bonds 6%	9,460,700.00
" " " " " " 5½%	2,482,000.00
Notes:	
Three-year gold notes	4,500,000.00
Equipment trust certificates	1,543,900.00
Unsecured 5-year noninterest-bearing notes	142,008.07
	42,611,208.07

XIII

10 Respondent has, since one hundred twenty (120) days after February 28, 1920, to wit, between June 20, 1923, and July 1, 1930, without having first obtained authority from the Interstate Commerce Commission as required by section 20a of the

interstate commerce act, assumed an obligation or liability as guarantor, surety, or otherwise, in respect of the securities of the Skokie Valley Realty Association, in that it has guaranteed a loan of that association in the amount of, to wit, one million six hundred ninety thousand dollars ($1,690,000).

XIV

Respondent has, since one hundred twenty (120) days after February 28, 1920, to wit, between June 20, 1923, and July 1, 1930, without first having obtained authority from the Interstate Commerce Commission as required by section 20a of the interstate commerce act, assumed an obligation or liability as guarantor, surety, or otherwise, in respect of the securities of the North Shore Material Company, in that it has guaranteed the outstanding first mortgage bonds of that company amounting to, to wit, two hundred ninety-five thousand five hundred dollars ($295,000), maturing serially from 1930 to 1936.

XV

Petitioner is informed and believes, and so believing alleges, that respondent is formulating a plan under and by which it proposes and intends to issue other securities without first obtaining authority so to do from the Interstate Commerce Commission as required by section 20a of said interstate commerce act.

XVI

That said acts of respondent, described in preceding paragraphs numbered XII, XIII, XIV, and XV were, are, and will be contrary to the provisions of said section 20a of said act, and are subject to be enjoined by this court, at the suit of the petitioner under the provisions of paragraph (1) of section 12 of said interstate
11 commerce act; and that, unless enjoined and restrained by this court, respondent intends to, and will, continue to issue its securities without obtaining authority from the Interstate Commerce Commission so to do, in violation of said section 20a of said act.

PRAYER

Wherefore, your petitioner prays:

1. That a writ of subpœna issue against the respondent requiring it, on or before a date to be specified therein, to appear before this honorable court, and then and there to make answer to this petition.

2. That the respondent be permanently enjoined and restrained from issuing any capital stock, bonds, or other evidence of indebtedness, collectively termed "securities," and from assuming any obligation or liability as guarantor, endorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, unless and until there shall first have been obtained from the Inter-

state Commerce Commission an order authorizing the issuance of such securities or the assumption of such obligation or liability.

3. That petitioner have such other and further relief as to the court may seem meet and as justice and equity may require.

GEORGE E. Q. JOHNSON,
United States Attorney.

WILLIAM D. MITCHELL,
Attorney General.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

12 [*Duly sworn to by Elmer B. Collins and George E. Q. Johnson; jurats omitted in printing.*]

13 [Omitted.]

14 In United States District Court

[Title omitted.]

Stipulation reextension of time

Filed Oct. 21, 1930

It is nonow and hereby stipulated by and between the parties herein, by their respective solicitors, that the time within which the defendant may answer or otherwise defend in the above-entitled cause be extended and that the said defendant may have until and on the 4th day of November, 1930, in which to answer or otherwise defend against the bill in equity filed in this cause.

GEORGE E. Q. JOHNSON,
U. S. Atty.

Solicitors for the United States of America.
RALPH R. BRADLEY,
Solicitor for Chicago North Shore and Milwaukee Railroad Company.

15 In United States District Court

[Title omitted.]

Order extending time

Oct. 21, 1930

Upon the presentation of the stipulation of the parties to the above-entitled cause, by their respective solicitors, it is now and hereby ordered that the time within which the defendant, Chicago

North Shore and Milwaukee Railroad Company, is required to answer or otherwise defend against the bill of complaint filed herein is now and hereby extended, and that said defendant may and shall have until and on the 4th day of November, 1930 in which to answer or otherwise defend against the bill of complaint filed herein.

CHARLES E. WOODWARD,
Judge.

16 In United States District Court

[Title omitted.]

Answer of Chicago North Shore and Milwaukee Railroad Company, defendant, to the bill of complaint of United States of America, complainant

Filed Nov. 3, 1930

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is or are material or necessary for it to make answer unto, answering says:

I

As to Paragraph I of the bill of complaint herein, this defendant, further answering, admits that it is a corporation, and that the predecessor corporations owning and operating subsequent to
17 March 1, 1920, the properties now owned and operated by the defendant were corporations, chartered, organized, and existing under and by virtue of the statutes of the State of Illinois sometimes described as the General Railroad Laws of the State of Illinois, and more particularly described as "An act to provide for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so organized; and authorizing the same and all railroad companies of this State to own and hold the stock and securities of railroad companies of other States owning a connecting line."

This defendant, further answering, states that the above-described statute is the only one available under the statutory law of the State of Illinois for the organization of a carrier by rail operating or seeking to operate railway properties other than urban street railways.

II

As to Paragraph II of the bill of complaint herein, this defendant, further answering, admits that at all times since March 1, 1920, this defendant was, and the predecessor corporations owning the prop-

erties now owned and operated by defendant were (except the Chicago North Shore and Northern Railroad hereinafter mentioned), engaged in the interstate transportation of property and passengers for hire over the lines of railroad owned, controlled, and operated by them, but this defendant says that its total miles of road owned are 113.62 and its total miles of road leased are 24.80, and that the operations of the defendant over owned and leased lines extend from 63rd Street on the South Side of Chicago, Illinois, to Second Street and Grand Avenue, in the city of Milwaukee, Wisconsin, with
18 a branch line extending from Lake Bluff, Illinois, to Mundelein, Illinois; and this defendant admits that it now is a common carrier by railroad, and it further admits that it is subject to certain of the provisions of the interstate commerce act, approved February 4, 1887, and is excluded from other provisions of said act; and this defendant particularly denies that it is, or any of its predecessors in ownership were, included within the provisions of section 20a of said interstate commerce act; and this defendant, further answering, states that it is excluded from the provisions of said section 20a in that the defendant is now, and each predecessor company at all times since March 1, 1920, has been, an interurban electric railway not operated as a part of a general steam railroad system of transportation, and that this defendant intends to continue as a common carrier by interurban electric railway not operated as a part of a general steam railroad system of transportation.

III

As to Paragraph III of the bill of complaint herein, the defendant answering denies that it was incorporated as alleged in said paragraph of said bill of complaint, but the defendant states the facts as to its organization and the organization of the predecessor owners of such property are as follows:

That its predecessor, Chicago North Shore and Milwaukee Railroad, a corporation organized under the railroad laws of the State of Illinois hereinbefore described, was incorporated on the 6th day of June, 1916, and operated the lines of railway now operated by the respondent as they then existed; that a corporation known as Chicago North Shore and Milwaukee Railroad Company was incorporated at the instance, and in the sole interest of, all of the stock-
19 holders of said first above-named corporation, on the 8th day of June, 1923, under the said aforedescribed railroad laws of the State of Illinois, and which corporation acquired all of the properties of the predecessor, Chicago North Shore and Milwaukee Railroad, on June 29, 1923; that on October 6, 1924, said Chicago North Shore and Milwaukee Railroad Company was consolidated, under the statutes of the State of Illinois in such case made and provided, with Chicago North Shore and Northern Railroad, into the present defendant corporation, Chicago North Shore and Milwaukee Railroad Company; defendant, further answering, states that said Chicago North Shore and Northern Railroad was incor-

porated and organized with termini in the State of Illinois for the purpose of doing only an intrastate business, and was not organized for the purpose of engaging in transportation by railroad subject to the interstate commerce act; defendant, further answering, admits that its present line of railroad extends to and from the city of Chicago, in the State of Illinois, from and to the city of Milwaukee, in the State of Wisconsin, traversing the States of Illinois and Wisconsin.

IV

As to Paragraph IV of said bill of complaint herein, the defendant, further answering, admits that on February 1, 1925, the line of railroad of the defendant included, in addition to the line described in Paragraph III of the bill of complaint, a line of railroad extending from a point of connection with the aforementioned line at Howard Street, in the city of Chicago, State of Illinois, to Dempster
20 Street, in the town of Niles Center, Illinois; and on, to wit, June 5, 1926, the respondent's line of railroad included, in addition to the hereinbefore-described lines of railroad, a line of railroad extending from a point of connection with the aforementioned lines at Dempster Street, in Niles Center, Illinois, to North Chicago Junction, Illinois, but defendant states that said line of railroad from said point of connection at Howard Street in the city of Chicago to North Chicago Junction, Illinois, was the line of railroad authorized by, and constructed pursuant to, the charter of said Chicago North Shore and Northern Railroad.

V

As to Paragraph V of said bill of complaint herein, this defendant denies that since its organization, and particularly since June 8, 1923, it has owned and operated, and now owns and operates, a railroad facility and conducts a railroad common carrier business similar to those operated and conducted by railroads generally, and in particular similar to the facilities operated and the business conducted by paralleling and/or competing railroad carriers, as alleged in said Paragraph V.

And the defendant, further answering as to subparagraph (a) of Paragraph V of the bill of complaint, admits that the motive power used by the respondent is electricity, and admits that it is authorized by its charter to operate its trains by steam or other power, but defendant denies that it is now using or ever has used steam locomotives in the operation of its properties, and states that it is prevented by franchise and ordinance provisions from operating its
21 trains and cars by steam locomotives in all the municipalities into and through which it operates in the State of Illinois and in the State of Wisconsin; defendant further states that its municipal rights to its terminal operations into and in the city of Milwaukee, Wisconsin, are based upon its being an interurban

electric railway and limited to the operation by a carrier of that class.

And the defendant, answering as to subparagraph (b) of Paragraph V of the bill of complaint, denies that its tracks are located on its private right of way, with the exception of short distances in a few municipalities aggregating approximately three (3) miles, and the defendant states the fact to be that all of its operations into and in the city of Chicago, Illinois, on trackage aproximating twenty-two (22) miles in length, is on the tracks of the Chicago Rapid Transit Company, owning and operating the intramural elevated railroad system in the city of Chicago, save a joint operation with said Chicago Rapid Transit Company over a right of way owned by Chicago, Milwaukee, St. Paul & Pacific Railway from Linden Avenue, Wilmette, to Wilson Avenue, Chicago, a distance of about eight (8) miles; and defendant, further answering, states that its entire operation into the city of Milwaukee, Wisconsin, is over street railway tracks with a mileage of about three (3) miles, and which operation is on the surface of the street in conjunction with street railway cars and other vehicular traffic; and the defendant further states that it has street operation on the surface in common with other vehicular traffic in the village of Wilmette, Illinois, the village of Kenilworth, Illinois, the village of Winnetka, Illinois, the village of Glencoe, Illinois, and the city of Highland Park, Illinois, and in the city of Waukegan, Illinois; defendant further alleges that it operates an intramural surface line
22 street car service in the city of Milwaukee, Wisconsin, in conjunction with its interurban operations and on the same tracks, that it operates an intramural street car service in the city of Waukegan part of which operation is in common with its interurban service, and that from the city of Waukegan to and into the city of Chicago it operates a quasi-street car service, stopping practically at every street intersection, in and through the municipalities of North Chicago, Lake Bluff, Lake Forest, Highwood, Highland Park, Glencoe, Hubbard Woods, Winnetka, Kenilworth, and Wilmette, all in common with its interurban service.

And the defendant, further answering, as to subparagraph (c) of Paragraph V of the bill of complaint, admits that it or its predecessor companies have acquired part of its right of way through the exercise of the power of eminent domain.

And the defendant, further answering, as to subparagraph (d) of Paragraph V of the bill of complaint, denies that it operates jointly with and over trackage leased from the Chicago, Milwaukee, St. Paul & Pacific Railway Company, as alleged, but states the fact to be that all of the passenger service over the trackage of said Chicago, Milwaukee, St. Paul & Pacific Railway Company mentioned is conducted, under intercorporate contracts approved by the Illinois Commerce Commission, by said Chicago Rapid Transit Company operating the intramural elevated transportation in the city of Chicago, and the defendant; that the only right of the Chicago,

Milwaukee, St. Paul & Pacific Railway Company over said leased line is the right to switch freight cars into and out of such leased trackage, and which switching is done under such intercorporate agreements by said Chicago Rapid Transit Company on separate industrial tracks, and not by the defendant.

23 And the defendant, further answering, as to subparagraph (e) of Paragraph V of the bill of complaint, denies that its roadbed was designed and built according to general railroad standards of construction permitting the use of standard equipment used generally by railroads.

Further answering, defendant denies the allegations contained in subparagraph (f) of Paragraph V.

As to the allegations of subparagraph (g) of said Paragraph V, the defendant admits that its line of railroad is standard guage, but denies that, with the exception of approximately one mile, its rails are of standard design, but defendant admits that its rails generally are "Tee" rails which are used on railroads generally, including interurban electric railroads and many street railroads.

Further answering as to subparagraph (h) of Paragraph V, defendant admits that some of its signals, switches, and crossing-protection devices are similar to those used on railroads generally, including interurban electric railroads, suburban electric railroads, and street railroads.

Further answering as to subparagraph (i) of Paragraph V of the bill of complaint, defendant says that at several points its tracks are physically connected with other railroads by interchange track, over which carload freight traffic can be and is interchanged without breaking bulk.

As to subparagraph (j) of Paragraph V of the bill of complaint, the defendant says that it has and uses seven electric locomotives, consisting of five straight electric and two electric and storage battery combined, which are of the type ordinarily used on electric interurban railways, but are lighter and of less power than similar locomotives used on electrified sections of trunk-line steam railroads.

24 Answering as to subparagraph (k) of Paragraph V of the bill of complaint, defendant says that it owns and uses in revenue haul approximately five box freight cars, twenty-two flat cars, and eighty-eight gondola cars, of standard design and construction, but that standard M. C. B. steam railroad freight equipment is barred from use upon a large trackage on the line of railroad of the defendant by reason of franchise and ordinance restrictions, sharp curves, want of clearance in bridges, subways, and culverts, and because of other operating disabilities common to interurban electric railways.

Defendant, further answering, states that the consignment of the freight equipment owned by it beyond its own line is negligible in amount, that said twenty-two flat cars are used almost entirely for

company purposes, and further, that defendant is prevented by legal restrictions and operating and contractual conditions and inhibitions from hauling any standard freight equipment into either its southern terminal, the city of Chicago, Illinois, or its northern terminal, the city of Milwaukee, Wisconsin.

Further answering as to subparagraph (1) of Paragraph V of the bill of complaint, defendant denies the allegations thereof and likewise denies the allegations of subparagraph (m) and subparagraph (n) in said Paragraph V.

VI

Further answering Paragraph VI of the bill of complaint, the defendant denies each and every allegation therein made, save that it admits and states that it is enabled to and does haul standard freight cars to a limited extent, and only in a manner and to the extent characteristic of interurban electric railways.

25

VII

As to Paragraph VII of the bill of complaint herein, the defendant denies that it is a member of the American Railway Association, but states the fact to be that it is an associate member of said American Railway Association under and pursuant to a by-law adopted by that association authorizing the board of directors thereof to admit to the association as associate members carriers which, in the judgment of the board, are not eligible for membership; defendant admits that it is a member of the Western Passenger Association, the Bureau for the Safe Transportation of Explosives, and the Western Weighing and Inspection Bureau, but denies that it is a member of the Central Freight Association.

VIII

As to Paragraph VIII of the bill of complaint, the defendant answering admits that it is a subscriber to the rules entered into and promulgated as described in said Paragraph VIII, but defendant states the fact to be that an interurban electric railway having any interchange of standard freight equipment at all with steam railroad trunk lines is obliged to be a subscriber to such rules.

IX

As to Paragraph IX of the bill of complaint, defendant admits that it files freight and passenger tariffs with the Interstate Commerce Commission, and admits that more than fifty per cent of its gross operating revenues is derived from rates and fares subject to the jurisdiction of and regulated by the Interstate Commerce Commission, but defendant states the fact to be that for the calendar year 1929 less than twenty-four per cent of its gross transpor-

26 tation revenues was received from the transportation of freight of all kinds, and that less than nine per cent of its gross transportation revenues was received from carload freight both interchanged with other carriers and originating and delivered on the line of defendant; that the defendant's revenues for said year derived from carload freight was less than thirty-nine per cent of its revenue derived from both carload and less-than-carload freight.

X

As to the allegations of Paragraph X, the defendant, further answering, denies that it solicits and handles its traffic as do railroad common carriers generally, and further answering as to subparagraph (a) admits that it has a traffic organization, but denies that it is an extensive one, and admits that it does business substantially as set forth in subparagraphs (b), (c), (d), (e), (f), (g), (h), and (i), but states that its operations and practices in this regard are typical of those of the interurban electric railways of the United States, and that its said operations and practices are all carried on by the defendant as an interurban electric railway.

XI

As to the allegations of Paragraph XI of the bill of complaint, the defendant, further answering, denies that it was and now is a corporation organized for the purpose of engaging in transportation by railroad subject to the interstate commerce act within the meaning of that term as used in section 20a of the interstate commerce act. (41 Stat. L. 494, U. S. C., Tit. 49, Sec. 20a.)

27 XII

As to Paragraph XII of the bill of complaint, the defendant answering admits that it has issued securities substantially as alleged in said Paragraph XII without the approval of the Interstate Commerce Commission, but this defendant denies that it was or is required by section 20a of the interstate commerce act to obtain such approval from said commission, because the defendant alleges and states that it now is, always has been, and its predecessor was, an interurban electric railroad, not operated as a part of a general steam railroad system of transportation, and comes within the parenthetical exception in section 20a of the interstate commerce act which excludes from the provisions thereof an interurban electric railway which is not operated as a part of a general steam railroad system of transportation, and defendant further alleges that the securities issued by it were issued after it acquired and after it began the operation of the properties as an interurban electric railroad. Defendant further states that all of said securities were issued upon the due and proper authority of the Illinois Commerce Commission and the Railroad Commission of Wisconsin, the regulatory bodies having jurisdiction in the premises.

XIII

As to the allegations of Paragraph XIII of the bill of complaint, the defendant admits the allegations therein contained, except that it denies that it was required by section 20a of the interstate commerce act to obtain the authority so to do from the Interstate Commerce Commission for the reason hereinbefore given in this answer.

28

XIV

As to Paragraph XIV of the bill of complaint, the defendant admits the allegations therein contained, save that it denies that it was required by section 20a of the interstate commerce act to obtain authority so to do from the Interstate Commerce Commission for the reasons hereinbefore given in this answer.

XV

As to the allegations of Paragraph XV of the bill of complaint, the defendant states that it is not required by section 20a of the interstate commerce act or any other law of the United States to obtain the consent of the Interstate Commerce Commission to issue its securities, all for the reasons hereinbefore given in this answer.

XVI

As to Paragraph XVI of the bill of complaint, the defendant answering denies that the acts described in Paragraphs XII, XIII, XIV, and XV were, are, and will be contrary to the provisions of said section 20a of said interstate commerce act, and denies that the same are subject to be enjoined by this court at the suit of the petitioner under the provisions of paragraph 1 of section 12 of said interstate commerce act; and further answering, defendant says that for the reasons hereinbefore given it is not required to obtain consent to the issue of its securities from said Interstate Commerce Commission, and on the other hand is required to obtain the consent of said Illinois Comerce Commission and said Railroad Commission of Wisconsin.

29 Wherefore, having fully answered, defendant prays that the application for an injunction be denied, and that the bill of complaint be dismissed, and for such other and further order as may be appropriate.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY,
By CHARLES E. THOMPSON, *Vice President.*
RALPH R. BRADLEY,
ADDISON L. GARDNER,
FREDERICK E. STOUT,
Solicitors for Defendant.
ROBERT E. QUIRK,
Of Counsel

30 [Duly sworn to by Charles E. Thompson; jurat omitted in printing.]

31 In United States District Court

[Title omitted.]

Stipulation as to narrative statement of evidence and order thereon

Filed July 26, 1932

It is hereby stipulated and agreed by the parties to this cause, acting by their respective counsel, for the purpose of settling the record for the appeal to the Supreme Court of the United States, that:

1. The attached statement of evidence, consisting of 16 typewritten pages of oral evidence in narrative form, and petitioner's Exhibits Nos. 1, 2, 3, 6, 7, 8, 12, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 33, 36, 39, and 46, and respondent's Exhibits Nos. 6, 22, and 26, is a true and correct transcript of that part of the oral and documentary testimony introduced at the trial of this cause, and, in connection with and addition to the facts found by the court, deemed necessary, for the determination of this appeal, as the same is contained in the official typewritten transcript in said District Court.

32 2. The attached statement of evidence shall be substituted for the original transcript, shall be incorporated in the record on appeal, and shall have the same force and effect upon the appeal as the original testimony.

3. Petitioner's Exhibits Nos. 1, 12, and 46, and respondent's Exhibit No. 26, consisting of a map of respondent's railroad line, numerous photographs of respondent's tracks, stations, and other facilities, and a series of respondent's advertisements of its service to the public, and being impracticable of reproduction and printing in the printed record on appeal, shall be transmitted by the clerk of this court in original form as part of the record on appeal, with this stipulation.

GEORGE E. Q. JOHNSON,
United States Attorney,
JOHN LORD O'BRIAN,
The Assistant to the Attorney General,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
Solicitors for United States of America, Petitioner.
RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore & Milwaukee Railroad Company, Respondent.

JULY 22, 1932.

Order

It is ordered that the within and attached stipulation and statement of evidence be and the same are hereby approved, and
33 that in preparing, certifying, and transmitting the transcript of record to the Supreme Court of the United States the clerk is directed to proceed in accordance therewith.

CHARLES E. WOODWARD,
United States District Judge.

34 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity, No. 10067

UNITED STATES OF AMERICA, PETITIONER

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, respondent

Narrative statement of evidence

Filed July 26, 1932

In the trial of the above-entitled cause, upon the petition of United States of America, petitioner, for a permanent injunction, and respondent's answer to said petition, which trial was had May 25, 1931, to June 3, 1931, before the honorable Charles E. Woodward, one of the judges of said court, sitting in equity without a jury, the evidence taken, so far as the same is pertinent to the issues presented upon an appeal herein now pending to the Supreme Court of the United States, was in substance as follows:

[File endorsement omitted.]

35 ALBERT S. RICHEY was called as a witness on behalf of respondent, and, being duly sworn, testified as follows:

The first commercially successful electric street railway in the United States started operation in Richmond, Virginia, in February, 1888. Between 1890 and 1894 there was a rapid development of electric street railways. Such lines were in operation at Chicago, Cleveland, Toronto, Indianapolis, and elsewhere at that time. The interurban electric railway evolved and developed from the electric street railway. (Tr. 224, 227.)

In the evolution and development of electric railways there came to be known different types and classifications of such railways with different names and designations. These names and designations are urban street railways, including both surface lines and rapid transit lines, suburban electric lines, interurban electric railways, and, in more recent years, electrified sections of steam railroads. (Tr. 226–227.)

B. J. FALLON was called as a witness on behalf of the respondent, and, being duly sworn, testified as follows:

The respondent is not a steam railroad. It is not owned by a steam railroad. It is not operated as a part of any steam railroad system. It is not an electrified section of a steam
36 railroad. The respondent is an electric railroad. It performs a street-car service, a suburban service, and an interurban service. There are only four kinds or classes of electric railways, namely, urban, suburban, interurban, and electrified sections of steam railroads. There is not now and never has been any other kind of an electric railway. (Tr. 430–433.)

The property of the predecessor respondent was not under Federal control and operation during the war. (Tr. 373.)

Whereupon respondent offered in evidence Exhibit 26, consisting of 84 photographs.

That the first photograph of Exhibit 26 is of a main-line train rounding a 95 degree radius curve at Wells and Van Buren Street, Chicago. The rounded ends of the cars may be seen, as well as the absence of vestibules and the alignment on the tracks at one end of each car and the trolley poles pulled down to the tops of the cars (Tr. 394); the second photograph is of main-line tracks and overhead trolley-wire construction of respondent leaving Greenleaf Avenue, a paved street in Wilmette (Tr. 395). Mr. Fallon stated that page 4 of Exhibit 26 shows the gauntlet track over Dodge Avenue at Niles Center; that this gauntlet is necessary to permit the freight car shown in the picture to clear the sides of the bridge and the third rail adjacent thereto; that this type of gauntlet track is typical of gauntlets used by respondent for clearance purposes (Tr. 396); that the operation over the gauntlet tracks requires trains to stop at a switch where the gauntlet leads off the main running rails; that a brakeman proceeds ahead and opens the switch;
37 that the train then passes on to the gauntlet tracks through the station or past the other clearance restrictions, after which the switch is closed behind the train; that another switch is open in front of the train which permits the train to pass back to the regular main-line running rails; that this kind of operation over gauntleted tracks is unknown on steam railroads (Tr. 256).

Page 11 of Exhibit 26 is of the main-line tracks of respondent through Glencoe. It also shows the track location and topography of respondent's lines, as well as the line of the Chicago and Northwestern Railway, which parallels respondent's line at this point. The photograph shows that respondent's line is distinctly different from the line of the Chicago and Northwestern.

Pages 15, 16, and 17 of Exhibit 26 show how respondent's line follows the contour of the ground, the open platforms, and the trolley-wire suspension.

Page 20 of Exhibit 26 is a photograph of a station of respondent in the store building across the paved street from the tracks.

Page 22 of this exhibit shows respondent's tracks on St. Johns Avenue in Highland Park. The tracks are in paved streets part of the distance and in an open part of the street with the paving adjacent thereto the remainder of the distance. The tracks follow the contour of the ground. On the right of the photograph is the pretentious station of the Chicago and Northwestern.

38 The remaining photographs in Exhibit 26 depict various physical conditions on the line of respondent.

Of the respondent's total owned tracks, 6.58 route miles are laid in paved streets; 0.197 route miles are laid in unpaved portions of city streets; 2.877 route miles are laid in unpaved street area, the track zone not being used for street purposes. In Milwaukee respondent's passenger trains and merchandise dispatch trains move over 2.625 route miles of the track in city streets. These tracks are owned and used for street-railway service by the Chicago and Milwaukee Electric Railway Company, which, in turn, is owned by the respondent. In Waukegan respondent owns and operates the city street-car service. Respondent owns and operates 7.43 route miles of track in Waukegan used in city street-car service, of which 3.29 miles are also used in interurban operation. (Deft. Exhibit 6.) (Tr. 252.)

Respondent owns its right of way from Wilmette to Milwaukee except for 6 miles of track in a few municipalities through which it runs on public thoroughfares. It owns all of the right of way of the Skokie Valley line. From Waukegan north to Milwaukee the right of way of respondent averages about 100 feet in width. South from North Chicago to the tracks of the Chicago Rapid Transit Company the right of way averages in width from 25 to 100 feet, the greater part being about 50 feet.

Respondent's bridges are built according to steam railway specifications and standards, and with the aid and by means of

39 gauntlet tracks in some instances to permit clearances, are suitable for the operation of standard freight cars of steam railroads. The bridges on the Shore Line route between Chicago and North Chicago Junction, which is mainly a passenger line, are built according to Cooper's E 30 specifications. Neither the viaduct used by respondent in entering Milwaukee nor the elevated structure used by respondent in Chicago will support steam railroad trains. (Tr. 280.) The bridges on the Shore Line between Chicago and North Chicago Junction will support two locomotives weighing 106 tons each and a load of 3,000 pounds per lineal foot.

The grades on the Shore Line of the respondent generally follow the topography of the ground, being less than 0.4 of 1 per cent on most of the tracks. Some parts of the roadbed of the Shore Line

are suitable for the operation of standard steam freight cars; other parts are not suitable for such operation. (Tr. 298–371.) Respondent's signals, switches, and crossing-protection devices, except in special cases, are similar to those used by steam railways. Parts of respondent's line are equipped with a modern railroad block signal system. On 22.73 per cent of main line route miles respondent cannot handle steam railroad equipment. (Tr. 372.) A regular train of either the Chicago and Northwestern or the Chicago, Milwaukee, St. Paul and Pacific could not be operated over the Shore Line between Chicago and Milwaukee. (Tr. 429.) Respondent does not operate any freight trains south of East Prairie road on the Skokie Valley line. Starting at 63d and Dorchester Avenue on the south side of Chicago, respondent performs no freight
40 service for any industry or team track until it reaches McCormick Boulevard on the Skokie Valley line, 15 miles north of the Loop district in Chicago. From that point north until the line of respondent reaches Harrison Street in Milwaukee, freight service is performed for industries and to sidings. Harrison Street is near the south limits of Milwaukee. The first freight siding on the Shore Line is near the south end of Highland Park, about 24 miles north from the Loop district in Chicago. (Tr. 442.)

The respondent maintains on its entire system of railroad 224 stations or stopping points at which it receives and discharges passengers. At 51 of these stations there is a station agent who sells passenger tickets and performs other duties customarily performed by station agents. At 96 of these points the respondent maintains shelters and platforms. At 35 of these points the respondent maintains platforms only. At 42 points certain of the respondent's trains stop at streets or highways, where no facilities or platforms are provided. At many of the stations there are no facilities for handling freight. (Deft. Exhibit 12.) All passenger stations within Chicago are owned by the Chicago Rapid Transit Company and are used by respondent in common with that company. No freight business is handled at any of these stations.

On the tracks of the Chicago Rapid Transit Company in Chicago and on the tracks owned but not used by the Chicago, Milwaukee, St. Paul and Pacific Railroad for about two miles between Howard Street in Chicago and Crawford Avenue in Niles Center, the
41 current is fed by the third-rail system. For a distance north of Howard Street on the tracks of the Chicago, Milwaukee, St. Paul and Pacific a gauntlet track is maintained and the current is fed through over an overhead trolley. The overhead trolley and the gauntlet track are necessary to enable the Chicago Rapid Transit Company to switch certain freight cars for the Chicago, Milwaukee, St. Paul and Pacific Railroad.

During the period of the construction of the Skokie Valley line and for a short time thereafter, respondent owned and used twelve steam

locomotives in the construction of that line and, after its completion, these locomotives were used by respondent in commercial freight business for a short period of time and then were sold. (Tr. 392–393.) Respondent does not now own or use any steam locomotives. Respondent owns two refrigerator cars which are similar to the merchandise dispatch cars. These refrigerator cars are used exclusively for cooling and storing perishable freight. They are not used to transport freight. Respondent's rolling equipment includes a number of ferry trucks or containers which are used to haul freight from the shipper to the respondent's depots by tractors and are then mounted on specially built flat cars to which they are fastened and are transported in that manner between Chicago and Milwaukee and between Chicago and Racine. There ferry trucks, or containers, are used for the same purpose as the container maintained by the Chicago and Northwestern Railway, but the character of the ferry trucks and the manner of handling them by the respondent are different from the container of the Chicago and Northwestern and its manner of handling such containers.

42 The track on the elevated system in Chicago from 63d and Dorchester to Leland Avenue is built on an elevated structure. All this track is third-rail-type transmission and also is a gauntlet track the entire distance. The gauntlet track is installed and used to throw freight equipment away from the third rail. These freight trains are operated only at night when there are long intervals between passenger trains, and in order to operate over these gauntlet tracks it is necessary for a brakeman to throw the switch at each end of the gauntlet. (Tr. 253–257.)

Merchandise dispatch cars are used for handling less-than-carload shipments between most of the stations on respondent's line. (Tr. 341.) Merchandise dispatch is handled in trains of one or more cars, usually a maximum of five cars. Most of the merchandise cars can be operated over the elevated structure in Chicago. A large portion of the operation in Chicago is from respondent's Montrose Avenue merchandise dispatch station located at Montrose Avenue and the Chicago Rapid Transit Company's right of way just west of Broadway, about six miles north of the Loop.

Respondent operates its merchandise dispatch cars handling l. c. l. freight all the way across the city of Chicago over the elevated tracks and has a station for receiving and delivering such freight at 63d and Calumet Avenue, at the south end of the elevated system. (Tr. 341–342.) Its main merchandise receiving station is at Franklin and Austin Streets, just outside the Loop. In addition to that

43 station it has two other receiving stations for merchandise freight, one at Polk and Racine and one at 41st and Union Avenue. (Tr. 343.)

Respondent's standard passenger fares are 3.6 cents per mile, the same as the standard fare generally in effect on steam railroads.

The commutation fares of respondent are higher than the commutation fares of the Chicago and Northwestern. The respondent and the Chicago and Northwestern are in direct competition with each other in their through passenger service, their limited service to Waukegan, and their suburban and commuters service. Respondent also competes with busses and boat lines.

Respondent operates its trains under train rules adapted to its requirements. (Deft. Exhibit 19.) Some of these rules are substantially similar to the standard code of train rules of the American Railway Association, under which steam railroads operate. In its operation over the elevated loop tracks of the Chicago Rapid Transit Company in Chicago, respondent is governed by the rules of the Rapid Transit Company. (Deft. Exhibit 18.) Respondent operates its trains under train orders, clearance cards, meet orders, changes in orders, and under certain other rules as to superior and inferior trains, which are similar to the rules followed by steam railroads. But respondent's operating rules are different in many substantial respects from the standard code of train rules of the American Railway Association. Respondent's code of train rules caution motormen to exercise great care when a vehicle is being drawn ahead of or alongside of the train. Motormen and
44 conductors must see to it that all cars are equipped with destination signs, which must be displayed. Respondent does not use symbols in employees' time tables such as are used by steam railroads. Respondent does not use any through communicating single appliances from car to car in operating trains such as are provided for in the standard code of rules governing steam railroads.

The respondent has certain standards of construction and of maintenance that are adaptable to certain divisions and certain sections of divisions of its line. Respondent has standards as to the weight of rail on certain divisions, which weight is adhered to in replacements and renewals. There is no such thing as a standard roadbed construction. The only thing that is standard about roadbed construction is in the gauge. There are still some narrow-gauge railroads. The standard of roadbed construction varies considerably on different parts of the same railroad and the construction on different railroads is in many respects different. (Tr. 273–274.)

Respondent's tracks entering its shops come out of the highway around very sharp curves and short switches. Neither a steam locomotive nor a steam railroad passenger car could be handled around these curves. (Tr. 328–330.)

In its operation over and through city streets respondent is required to observe the municipal traffic regulations, such as stop and go signals at street intersections and at other points. (Tr. 362–365.)

B. J. Fallon, a witness called on behalf of the respondent, further testified as follows on the cross-examination:

That the 31.47 miles of track shown on respondent's Exhibit 22 as route mileage on which it is impossible to handle freight
45 on account of franchise and clearance restrictions constitutes 22.73 per cent of respondent's total route mileage (Tr. 371–373), but includes 16.9 miles of track of the Chicago Rapid Transit Company and 3.3 miles of track of the Chicago Milwaukee Electric Railway Company in Milwaukee; and that the remaining mileage affected by franchise and clearance restrictions as shown on Deft.'s Exhibit 22 is located on respondent's "Shore Line" between Linden Avenue in Wilmette and the south city limits in Highland Park (Tr. 436–439).

That defendant operates its fast limited train service between Chicago and Milwaukee over its "Skokie Valley Line" and does not use its "Shore Line" for that service. (Tr. 440.)

That starting at 63d and Dorchester Avenue, Chicago, respondent renders no carload freight service to any type of industry or team track until its line reaches the point just west of the McCormick Boulevard on the Skokie Valley Line, about 15 miles from the Loop district in Chicago; from McCormick Boulevard north respondent has freight service to sidings and industries until it reaches Harrison Street in the south part of Milwaukee. (Tr. 442.) North of Harrison Street respondent operates its merchandise dispatch or l. c. l. freight service, but no carload freight service. (Tr. 445.)

On its Shore Line the first siding on which respondent handles commercial freight is toward the south end of Highland Park, about 24 miles from Chicago. (Tr. 442.) On the Shore Line respondent renders two types of passenger service—a local service with
46 stops at all stations and a fast or limited service with stops at the main stations in each town on the line. Respondent also renders freight service on its Shore Line north of Highland Park.

On redirect examination B. J. Fallon further testified as follows: That respondent's Shore Line "is susceptible of being used for fast trains between Chicago and Milwaukee"; that respondent operated its fast trains over the Shore Line before completion of its Skokie Valley Line in June, 1926, and that it now operates its fast train service over the latter line because it makes better time. (Tr. 454.)

CHARLES E. THOMPSON was called as a witness on behalf of respondent, and, being duly sworn, testified as follows:

During the calendar year 1930 the total operating revenues of respondent were $6,581,961.40. Of that amount, $4,706,855.01, or approximately 78 per cent, was derived from passenger service and the remainder, $1,384,547.58, was derived from freight service. (Deft. Exhibit 32.) The revenue derived from carload freight handled by respondent was 8.63 per cent of the total revenue. The revenue derived from less-than-carload freight was 11.47 per cent of

the total revenue. The revenue from all freight, including mail, express, and milk, was 21.03 per cent of the total revenue. Of the revenue from carloads, 17.25 per cent was from traffic local to the respondent and 82.75 per cent was from interline traffic. Of the revenue from less-than-carload freight, 88.4 per cent was from local traffic and 11.58 per cent from interline traffic. (Tr. 479.)

47 Of the total revenue from freight over 60 per cent was derived from less-than-carload freight. (Deft. Exhibit 32.)

Respondent's methods of business solicitation are similar in some respects to the methods of steam railroads. It advertises in certain trade papers used by steam railroads. It is a member of certain traffic or tariff organizations to which steam railroads belong. It is a party to tariffs which apply to traffic throughout the United States and to traffic between the United States and Canada. It maintains no off-line soliciting agents such as are maintained by steam railroads. (Tr. 508–509.)

The securities issued by respondent each year since March 1, 1920, have been reported to the Interstate Commerce Commission in the annual reports of respondent filed with that commission. Each report has shown the character of business handled by respondent and has also shown that the securities have been issued with the approval and under the authority of the regulating commissions of Wisconsin and Illinois. (Tr. 480.) The form of annual report prescribed by the Interstate Commerce Commission for use by electric lines requires that the character and par value of securities issued during the year be reported and that the authority under which issued be shown. In the year 1924, through inadvertence, the annual report of respondent to that commission failed to show the authority under which the securities were issued. An official of the commission directed respondent's attention to that omission by letter in January, 1926. An official of respondent advised the commission that the securities reported in 1924 were issued under authority of the regulating commissions of Wisconsin and Illinois. (Tr. 481–484.) (Deft. Exhibit 33.)

48 Prior to March, 1923, the general counsel of respondent filed a brief with the Interstate Commerce Commission in which respondent took the position that it should be excluded from section 15a of the interstate commerce act because it was an interurban electric railroad not engaged in the general transportation of freight and not operated as a part of a general steam railroad system of transportation. On March 29, 1923, the director of the Bureau of Finance of the commission advised the general counsel that—

" unless you are later advised to the contrary, this carrier will not be required to file returns in response to the commission's orders dated January 16, 1922, and March 16, 1922, ' in the matter of the recovery and payment of excess railway operating income under the provisions of section 15a of the interstate commerce act.' "

On April 19, 1923, the general counsel for respondent addressed a letter to the director of the Bureau of Finance of the commission referring to the brief previously filed and the correspondence had concerning the application of section 15a to respondent. On April 25, 1923, the director of the Bureau of Finance of the commission advised respondent that—

"unless you are later advised to the contrary, no further information will be required in connection with this order." (Deft. Exhibit 41.)

The respondent has not up to this time been advised by the commission to the contrary in respect to its claim of exemption from the provisions of section 15a. (Tr. 506.)

In its annual report to Congress for the year 1928, after citing the language excluding street, suburban, and interurban electric railways from various sections of the interstate commerce act, the commission said in part:

49 "Practically all of the interurban electric lines of the country are engaged to a greater or less extent in the transportation of freight. Ordinarily these lines have a preponderance of passenger traffic, but the large diversion of such traffic to highways through the increasing use of automobiles has led these carriers to endeavor to recoup these losses through increased participation in freight traffic."

The commission concluded its comment in its annual report of 1928 to Congress with the following recommendation as to needed amendments in the act:

"That the present exemption provisions of paragraph (22) of section 1, paragraph (1) of section 15a, and paragraph (1) of section 20a, applicable to electric railways, *be amended by substituting provisions exempting all electric railways except such as interchange standard freight equipment with steam railways, and participate in through interstate freight rates with such carriers;* provision to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the commission, after notice and opportunity to be heard, that they are not affected with an important national interest so far as the provisions in question are concerned." (Italics ours.)

ROY A. PORTERFIELD, a witness called on behalf of the complainant, and, being duly sworn, testified in part as follows:

That complainant's Exhibit 3 was prepared to and does show the lengths of tracks laid in streets, and that since respondent's line through the streets is double tracked, the miles of track shown on that exhibit should be doubled in order to obtain the total miles of track laid in streets. (Tr. 124.)

PEARSON F. MARSH, a witness called on behalf of the complainant, and, being duly sworn, testified in part as follows:

50 That the investigation made by him with respect to respondent's operating revenues, freight and passenger, and other analyses of respondent's traffic and operations as a carrier, as testified to by him, were limited to the five-year period ending December 31, 1930. (Tr. 160–161.)

That respondent's records and accounts show that in 1924 it purchased two steam locomotives and in 1925 purchased ten additional steam locomotives. In 1925 and 1926 these locomotives were used exclusively in constructing the Skokie Valley line. After completion of that line a number of these steam locomotives were used extensively for transporting revenue freight on the Skokie Valley line. Two of these steam locomotives were sold in 1925, one in 1926, six in 1927, and one was sold in 1928. Respondent's records show no use of any steam locomotives during November and December, 1927, and January, 1928. (Tr. 197–198.)

52 COMPLAINANT'S EXHIBIT 2

Chicago North Shore & Milwaukee Railroad Company

Mileage statement

Description	State	1st main	2nd main	Yd. trk. & sid.	Total
Laurel Ave., Wilmette, to State line	Ill.	31.7748	31.7748	11.7247	75.2743
Skokie Valley line	"	26.2952	26.3104	16.1502	68.7558
Libertyville branch	"	8.8092	8.2259	4.1202	21.1553
Waukegan branch [1]	"	3.2940	3.0223	0.8102	7.1265
State line to Milwaukee	Wis.	35.9213	35.3392	8.8159	80.0764
Total		106.0945	104.6726	41.6212	252.3883
Tracks leased from C., M., St. P. & Pac. Wilson Ave., Chi., to Laurel St., Wilmette [2]	Ill.	7.83	7.83	0.23	15.89
Total used, exclusive of trackage rights and street-car operation only		113.9245	112.5026	41.8512	268.2783
Trackage rights from—					
Chicago Rapid Transit [3]	Ill.	16.97	16.97		33.94
Chicago & Milwaukee Elec. Ry [4]	Wis.	2.6752	2.6813	0.0910	5.4475
Total		19.6452	19.6513	0.0910	39.3875
Street-car operation only:					
In streets at Waukegan	Ill.	4.1333		0.6665	4.7998
Milwaukee [5]	Wis.	0.6784	0.6723		1.3507

[1] Does not include those tracks on which there is street-car operation only.
[2] Chicago Rapid Transit has trackage rights on these tracks.
[3] Used by Chicago Rapid Transit also in its operations.
[4] Used by Chicago and Milwaukee Electric Ry. in its street-car operations.
[5] Used by Chicago and Milwaukee Electric Ry. in its street-car operations, but not used by Chicago North Shore and Milwaukee.

[File endorsement omitted.]

53 EXHIBIT 3

Chicago, North Shore and Milwaukee Railroad Company

Tracks laid in streets

Town	Street	Tracks laid in area used for street traffic		Track zone not used for street purposes, not paved (feet)
		Paved (feet)	Not paved (feet)	
Wilmette	Greenleaf Ave	4,218		
"	Railroad Ave		870	
Kenilworth	Str		700	
"	"	646		
Winnetka	Wilson Ave. & Str			1,565
Hubbard Woods	Hubbard St	1,166		5,112
Glencoe	Glencoe Ave			
Highland Park	St. John Ave	602		2,033
Lake Forest	McKinley Road			1,425
North Chicago	Commonwealth			1,320
" "	State Str			*2,580
Waukegan	Marion & Genesee Str	*6,300		
Mundelein	Morris			1,155
Total		12,932	1,570	15,190
Miles		2.449	0.197	2.877
Trackage rights in Milwaukee over Chicago-Milwaukee Electric Ry., used jointly with the owner		*13,860		
Miles		2.625		
Street-car service only:				
In Waukegan: Various streets		21,800		
In Milwaukee: " "		¹ 3,530		
Total		25,330		
Miles		4.797		

*Street-car service operated over these tracks.

¹ This mileage owned and used by Chicago & Milwaukee Electric Ry. and is in addition to that over which the C. N. S. & M. R. R. has a trackage right.

COMPLAINANT'S EXHIBIT 6

Chicago North Shore and Milwaukee Railroad Company

Weight of main-line rails

Location	Ordinary "T" rails				Rails for use in pavement							Total
	65#	80#	90#	100#	"T" #375 91#	"T" #400 95#	Gruved #450, 98#	"T" #516, 102#	Gruved #494, 110#	Gruved #397, 127#	Gruved #456, 128#	
South or east bound												
Laurell Ave., Wilmette, to Harrison St., Milwaukee	8,951	134,331	.....	207,470	2,390	.....	301	.....	3,843	133	.....	357,419
Skokie Valley line	.....	78,517½	.....	60,401½	.....	.....	.....	.....	.....	.....	.....	138,919
Waukegan branch	.....	10,041	.....	131	5,705	304	.....	.....	.....	327	.....	16,508
Freight line at North Chicago	.....	2,540	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,540
Libertyville branch	29,849	11,553	70	1,961	.....	.....	.....	.....	.....	.....	.....	43,433
Total	38,800	236,982½	70	269,963½	8,095	304	301	.....	3,843	460	.....	558,819
Percentage	6.9	42.4	.....	48.3	1.4	0.1	0.1	.....	0.7	0.1	.....	100
Miles	7.348	44.883	0.013	51.129	1.533	0.058	0.057	.....	0.728	0.087	.....	105.837
North or west bound												
Laurell Ave., Wilmette, to Harrison St., Milwaukee	10,273	131,709	.....	205,651½	2,614	.....	257	.....	3,841	.....	.....	354,345½
Skokie Valley line	.....	86,263½	.....	52,575½	.....	.....	.....	.....	.....	.....	.....	138,839
Waukegan branch	.....	9,985	.....	143	6,031	.....	.....	746½	.....	336	.....	17,241½
Freight line at North Chicago	.....	3,773	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,773
Libertyville branch	20,985½	23,519½	60	1,948	.....	.....	.....	.....	.....	.....	.....	46,513
Total	31,258½	255,250	60	260,318	8,645	.....	257	746½	3,841	336	.....	560,712
Percentage	5.6	45.5	.....	46.4	1.5	.....	0.1	0.1	0.7	0.1	.....	100
Mileage	5.920	48.343	0.011	49.303	1.637	.....	0.049	0.141	0.727	0.064	.....	106.195
Total, both main tracks	70,058½	492,232½	130	530,281½	16,740	304	558	746½	7,684	796	.....	1,119,531
Percentage	6.1	44.0	.....	47.4	1.5	.....	0.1	0.1	0.7	0.1	.....	100
Miles	13.269	93.226	0.025	100.432	3.170	0.058	0.106	0.141	1.455	0.151	.....	212.032
Trackage rights over Chicago & Mil. Electric S. B.	.....	608	.....	371	114	6,674	.....	5,807	.....	.....	1,231½	14,865½
" " " " " " " " N. B.	.....	364	.....	327	130	6,690½	.....	5,838	.....	.....	1,248	14,597½
Total	.....	1,032	.....	698	244	13,364½	.....	11,645	.....	.....	2,479½	29,463
Percentage	.....	3.5	.....	2.4	0.8	45.4	.....	39.5	.....	.....	8.4	100
Miles	.....	0.195	.....	0.132	0.046	2.531	.....	2.205	.....	.....	0.470	5.580

Street-car operation only												
In Waukegan S. B.—Chi., N. S. & M. tracks					4,413			1,957		167		6,537
" " N. B.— " " "				1,018½	13,887	498		2,245		330		17,978½
" " S. B.—North Shore & Waukegan trks								1,437		163		1,600
In Milwaukee Chi. & Mil. Elec. (S. B.						3,530						3,530
" " not used by C. N. S. & M. (N. B.						3,572						3,572
Total				1,018½	18,300	7,600		5,639		660		33,217½
Percentage				3.1	55.1	22.9		16.9		2.0		100
Miles				0.193	3.466	1.439		1.068		0.125		6.291

55 COMPLAINANT'S EXHIBIT 7

Chicago North Shore and Milwaukee Railroad Company

Equipment

ELECTRIC LOCOMOTIVES

No.	Numbered	Weight	No. axles	No. motors	Type motor	Tonnage rating	Tractive effort	Date purchased
2	450, 451	35 tons	4	4	G. E. 205	400	17,500#	Prior to 1920.
3	452-3-4	50 "	4	4	G. E. 257	600	25,000#	Prior to 1920 for 452-453; 1923 for 454.
2	455-6 [1]	70 "	4	4	G. E. 251	1,200	35,000#	1927.

[1] NOTE.—These locomotives equipped with 192-cell storage batteries so that they may be operated on tracks which are not electrified.

FREIGHT EQUIPMENT

Kind	No.	Serial number	Length	Width	Height	Capacity
Refrigerator	5	240-244	30' 0"	8' 0"	12' 4"	30,000
Box	8	3013-3020	40' 6"	9' 4"	15' 5"	60,000
"	2	3021-3022	36' 11"	9' 6"	13' 1½"	45,000
Side dump	2	1218-1219	20' 9"	9' 6"	7' 4"	36,000
" "	48	1224-1231, 1233-1264, 1266-1273	28' 0"	8' 6"	8' 10"	36,000
" "	20	1274-1293	31' 1½"	10' 4"	8' 5½"	80,000
Flat	16	1400-1402, 1404-1406, 1408-1417	34' 1"	9' 9"		60,000
"	2	1418-1419	34' 1"	9' 9"		80,000
"	4	1500-1503	43' 0"	9' 4"		40,000
"	10	1504-1513	60' 4"	9' 4"		80,000
"	2	2010-2022	34' 1"	9' 9"		60,000
"	1	2060	40' 6"	9' 2"		80,000
Gondola	52	2000 series	36' 1"	9' 11"	7' 7"	80,000
"	16	5000 "	42' 1"	10' 1½"	8' 4"	100,000
"	20	6000 "	41' 8"	10' 4"	8' 5"	100,000

MERCHANDISE DISPATCH CARS (WOOD BODY)

No.	Serial number	Length	Width	Weight	Motor or trailer	Capacity
1	6	50' 0"	8' 10½"	65,000	Motor	20,000.
2	200-202	52' 3"	8' 8¾"	70,000	"	20,000.
37	203-259	50' 0"	8' 8"	74,000	"	40,000.
5	240-244	50' 0"	8' 8"	69,500	Trailer	35,000-refrigerators.
1	5	39' 8"	8' 11"	40,000	"	20,000.

150 cars with motors; 32 as trailers; total, 182.
146 " " M.C.B. drawbars, 27" from rail, 4' 10" long.
2 " " Other " 16" " " 4' 6" "
34 " " " " 16" " " 5' 7" "

No.	Weight	No.	Length	No.	Vestibule offset to clear platforms
2	41,000	2	47' 2"	2	0"
7	55,000	34	52' 3"	13	3"
11	75,000	116	55' 3"	15	4"
10	77,000	30	56' 1"	152	6"
17	78,000				
9	81,000				
		No.	Width		
5	86,000	2	8' 6"		
27	91,000	161	8' 8"		
4	94,000	13	8' 9"		
22	100,000	6	9' 1"		
8	103,000				
60	104,000				

No.	Seating	Type
9	22-24	Dining cars.
1	16	Parlor car.
4	31	" "
5	28	Combination baggage passenger.
1	32	" " "
1	40	" " "
4	48	Wood passenger.
43	50	Steel "
2	51	Wood & Steel passenger.
26	52	" " "
7	52	Steel " " (7 trailers).
67	54	" " "
15	56	" " (13 trailers).

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COMPLAINANT'S EXHIBIT 8

Chicago, North Shore and Milwaukee Railroad Company

Passing tracks

Location	Length [1]	Car capacity		
		Freight	Passenger	
Indian Hill	346	7	5	
Eldorado	269	5	4	
Tower Road	406	9	7	Used as team track also.
Green Bay Road	379	8	6	
Lavina Park, N. B	1,289	28	22	" " " " "
" " N. & S. B	680	15	11	Center trk.
Farwells	850	18	14	Used as team track also.
Kennedys	1,000	22	17	" " " " "
Great Lakes, N. B	1,326	29	22	
" " S. B	778	16	13	
Zion, N. B	1,070	23	18	Used as team track also.
" S. B	760	16	13	
Winthrop Harbor	500	11	8	" " " " "
Racine	319	7	5	" " " " "
Four Mile Road	1,212	26	20	" " " " "
Six " "	683	15	11	" " " " "
Oakwood	511	11	8	" " " " "
Kelleys	1,939	43	33	" " storage " "
St. Marys of the Lake	755	17	13	

[1] NOTE—Length given is beyond the clearance point of tracks.

Passing tracks: 8, with total length of 5,293; capacity, 113 freight or 87 pass. cars; 11 used as team or storage tracks; total length, 9,779; capacity, 213 freight or 163 passenger cars.

Industry tracks, team tracks, & freight tracks

Location	Number tracks	Total length [1]	Car capacity	
			Freight	Passenger
Beach Street	1	210	4	3
Elm Place	3	1,351	29	23
Vine Ave	2	1,037	22	17
Highwood	2	1,500	32	25
Northgate	1	580	12	10
Sacred Heart	1	190	4	3
Great Lakes	3	2,996	62	51
North Chicago	9	5,108	109	85
Waukegan	14	8,728	209	155
Beach	1	604	13	10
South Kenosha	1	752	16	13
Kenosha	9	3,974	85	64
Burlington Road	2	2,791	61	47
Birch Road	1	874	19	15
Berryville	1	572	12	9
Pipers	1	861	19	15
Klinkerts	1	501	11	8
Racine	3	2,032	29	22
58 Racine Quarry	6	6,753	145	113
Milwaukee	3	1,389	30	6
Crawford Ave	7	7,935	174	133
Kostner Ave	2	4,991	111	83
Oakton St	1	747	16	12
Dempster St	1	1,772	38	30
Church St	1	290	6	5
Harrison St	3	1,493	33	25
Wilmette Ave	2	2,005	44	34
Lake Ave	3	3,040	69	50
Northfield	7	3,447	75	56
Brier Gate	4	2,422	53	44
West Park Ave	1	688	15	11
Deerpath	1	1,945	43	33
Knollwood	1	897	20	15
Roundout	1	1,050	23	18
Green House	1	262	6	4
Liberty Lake	5	5,689	127	96
Mundelein	2	1,280	27	21
Total	108	82,765	1,801	1,364

Pettibone freight classification yard, 11 tracks, with freight-car capacity of 265.

Interchange tracks

Location	Conn. Rd.	No. tracks	Length [1]	Capacity
Highwood	C. & N. W.	1	480	7
Racine	C. M. St. P. & P.	1	1,040	21
Roundout	E. J. & E.	2	5,749	129
	C. M. St. P. & P.			
Mundelein	M. St. P. & S. S. M.	2	2,166	48
Niles Center	C. & N. W.	2	.....	New connections.
Great Lakes	C. & N. W.	2	.....	" "

[1] NOTE.—Length given is beyond the clearance point of tracks.

COMPLAINANT'S EXHIBIT 18

Statement of transportation revenues of the Chicago, North Shore & Milwaukee Railroad Company for the five years ended December 31st, 1930

Account No.	Account	1926		1927		1928		1929		1930	
		Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent
(101)	Passenger revenue	[1] $5,666,172.15	78.6	[2] $5,892,449.55	78.6	$5,519,901.29	75.5	$5,542,767.95	74.7	$4,601,581.70	73.5
(102)	Baggage revenue	21,551.66	.03	26,576.90	0.4	32,502.51	0.4	37,915.79	0.5	34,342.72	0.6
(103)	Parlor, dining, and special car revenue	[3] 224,683.22	3.1	[4] 191,175.70	2.5	120,977.84	1.7	110,516.84	1.5	70,930.59	1.2
(104)	Mail revenue	37,140.08	0.5	48,867.01	0.7	54,112.63	0.7	58,104.57	0.8	57,880.04	1.0
(105)	Express revenue	6,286.07	0.1	3,634.72	0.0	2,012.74	0.0	2,422.89	0.0	1,530.47	0.0
(106)	Milk revenue	1,245,560.87	17.3	1,328,499.57	17.7	1,580,040.11	21.6	1,664,981.70	22.4	1,323,023.70	21.7
(107)	Freight revenue	9,900.00	0.1	6,669.72	0.1	5,532.21	0.1	5,704.18	0.1	1,860.73	0.0
(108)	Switching revenue	437.00	0.0	380.10	0.0	500.00	0.0	359.37	0.0	252.64	0.0
(109)	Miscellaneous										
	Total revenue from transportation	$7,211,820.85	100.0	$7,408,253.27	100.0	$7,315,579.33	100.0	$7,422,773.29	100.0	$6,091,402.59	100.0

[1] Includes $194,613.91 revenue from motor-coach operations.
[2] Includes $181,247.31 revenue from motor-coach operations.
[3] Includes $95,985.79 revenue from motor-coach operations.
[4] Includes $65,821.32 revenue from motor-coach operations.

COMPLAINANT'S EXHIBIT 20

Chicago North Shore & Milwaukee Railroad Company

Statement of revenues on carload and less-than-carload freight for the five years 1926 to 1930, inclusive (see Note)

Year	L. C. L. freight		Carload freight		Total revenues on freight
	Revenue	Per cent	Revenue	Per cent	
1926	$1,012,794.18	77.9	$286,619.64	22.1	$1,299,413.82
1927	1,019,206.49	73.4	368,844.63	26.6	1,388,051.12
1928	1,058,938.37	64.5	583,259.32	35.5	1,642,197.69
1929	1,073,097.81	62.0	658,474.90	38.0	1,731,572.71
1930	814,319.56	58.8	570,228.02	41.2	1,384,547.58

NOTE.—Comprises express, milk, freight, switching, and miscellaneous revenues as reflected by accounts 105 to 109, both inclusive.

COMPLAINANT'S EXHIBIT 21

Chicago North Shore & Milwaukee Railroad Company

Statement of local and interline freight tonnage divided between carload and less-than-carload traffic for the five years 1926 to 1930, inclusive (see Note)

	Carload freight		L. C. L. freight		Total freight traffic	
	Net tons	Per cent	Net tons	Per cent	Net tons	Per cent
1926:						
Local	252,028.47	49.7	136,168.18	92.5	388,196.65	59.3
Interline	255,068.15	50.3	10,972.96	7.5	266,041.11	40.7
Total	507,096.62		147,141.14		654,237.76	
Per cent	(77.5%)	100.0	(22.5%)	100.0	(100.0%)	100.0
1927:						
Local	185,253.80	26.7	132,231.11	89.0	317,484.91	37.6
Interline	509,909.15	73.3	15,870.47	11.0	525,779.62	62.4
Total	695,162.95		148,101.58		843,264.53	
Per cent	(82.4%)	100.0	(17.6%)	100.0	(100.0%)	100.0
1928:						
Local	283,890.40	25.8	142,073.64	88.2	425,964.04	33.7
Interline	817,849.89	74.2	18,964.77	11.8	835,814.66	66.3
Total	1,101,740.29		161,038.41		1,262,778.70	
Per cent	(87.2%)	100.0	(12.8%)	100.0	(100.0%)	100.0
1929:						
Local	283,610.53	22.5	141,675.87	87.3	425,286.40	29.9
Interline	976,628.22	77.5	20,592.74	12.7	997,220.96	70.1
Total	1,260,238.75		162,268.61		1,422,507.36	
Per cent	(88.6%)	100.0	(11.4%)	100.0	(100.0%)	100.0
1930:						
Local	171,528.87	15.0	106,976.08	84.7	278,504.95	22.2
Interline	963,017.60	85.0	19,252.40	15.3	982,270.00	77.8
Total	1,134,546.47		126,228.48		1,260,774.95	
Per cent	(90.0%)	100.0	(10.0%)	100.0	(100.0%)	100.0

NOTE.—Excludes carload freight handled in switching service.

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EXHIBIT 22

Chicago North Shore & Milwaukee Railroad Company

Statement of passenger and freight revenues, showing amounts earned on local and interline traffic for the years 1926 to 1930, inclusive

Character of traffic	Passenger revenue		Freight revenue	
	Amount	Per cent	Amount	Per cent
1926:				
Local	[1] $5,442,020.37	99.46	$1,075,967.49	86.38
Interline	29,537.87	0.54	169,593.18	13.62
Total	$5,471,558.24	100.00	$1,245,560.67	100.00
1927:				
Local	[1] $5,663,004.85	99.16	$1,036,329.77	78.01
Interline	48,197.39	0.84	292,169.80	21.99
Total	$5,711,202.24	100.00	$1,328,499.57	100.00
1928:				
Local	$5,424,898.87	98.28	$1,003,534.35	69.21
Interline	95,002.42	1.72	486,505.76	30.79
Total	$5,519,901.29	100.00	$1,580,040.11	100.00
1929:				
Local	$5,448,153.86	98.29	$1,086,618.10	65.26
Interline	94,614.09	1.71	578,363.60	34.74
Total	$5,542,767.95	100.00	$1,664,981.70	100.00
1930:				
Local	$4,487,807.41	97.53	$765,477.77	57.86
Interline	[2] 113,774.29	2.47	557,545.93	42.14
Total	$4,601,581.70	100.00	$1,323,023.70	100.00

[1] Excludes motor-coach operations.
[2] Increase due to tickets sold under joint rates with the Metropolitan Motor Coach Co., for the national air races held at Curtis Airport ($22,515.29).

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COMPLAINANT'S EXHIBIT 23

Chicago North Shore & Milwaukee Railroad Company

Analysis of passenger revenues for month of September, 1930

Class of tickets	Total amount	Per cent of local fares	Between cities (Note A)	
			Amount	Per cent of total
Local				
One-way tickets	$201,701.06	59.5	$139,299.23	69.1
10 ride "	35,254.10	10.4	7,364.22	20.9
25 " "	47,855.60	14.1	16,452.95	34.4
50 " —Childs	7,617.14	2.3	174.75	2.3
50 " —Monthly	8,257.67	2.4	64.13	0.8
60 " — "	12,071.35	3.6	3,292.81	27.3
Shoppers R. T	11,084.73	3.3	2,139.00	19.3
100 coupon book	47.00	0.0		
Cash fares	14,839.45	4.4		
			4,794.88	
Total	$338,728.10	100.0	$173,581.97	51.2
Interline				
C. N. S. & M's. proportion of interline ticket sales	$9,235.64			
Due from foreign lines on interline tickets	4,725.16			
Total	$13,960.80			
Waukegan city line	12,601.32			
Grand total	$365,290.42			
Refunds, transfer charges, and miscellaneous debits	*1,473.67			
Exchange tickets and miscellaneous credits	442.99			
Total passenger revenue	$364,259.74			

NOTE A.—Ticket sales between Chicago stations and Waukegan, Ill., Kenosha, Racine, and Milwaukee, Wis.

*Red.

COMPLAINANT'S EXHIBIT 24

Chicago North Shore and Milwaukee Railroad Company

Statement of interline ticket sold for transportation of passengers via the North Shore Line in coonnection with steam railroads, steamship lines, air lines, and motor-coach lines as shown by interline passenger revenue accounts for month of September, 1930

INTERLINE TICKETS SOLD AT STATIONS ON THE NORTH SHORE LINE

For transportation via—	To points in—
STEAM RAILROADS	
1. Atchison, Topeka & Santa Fe	Calif., Colo., Kans., Mo., New Mex., Tex.
2. Atlantic Coast Line	Fla., So. Car.
3. Baltimore & Ohio	Dist. of Col., Md., N. M., N. Y., N. C., Pa., Va.
4. Boston & Albany	Conn., Mass.
5. Boston & Maine	Mass.
6. Canadian National	Ontario and Quebec, Canada.
7. Canadian Pacific	Ontario and Quebec, Canada.
8. Central of Georgia	Fla., Ga.
9. Central Railroad of New Jersey	N. J.
10. Chesapeake & Ohio	Ind., Ohio, Va., W. Va.
11. Chicago and Alton	Ark., Calif., Ill., Mo.
12. Chicago, Burlington & Quincy	Calif., Ia., Mont., Neb., Wis.
13. Chicago Great Western	Ia.
14. Chicago, Indianapolis & Louisville	Ind., Ky., Ohio.
15. Chicago, Milwaukee, St. Paul & Pacific	Ia., Minn., Mich., S. D., Wash., Wis.
16. Chicago, Rock Island & Pacific	Ariz., Calif., Colo., Ia., Mo.
17. Cincinnati, New Orleans & Texas Pacific	N. C.
18. Cleveland, Cincinnati, Chicago & St. Louis	Fla., Ind., Ky., N. C., Ohio, Va.
19. Delaware, Lackawanna & Western	N. Y., Pa.
20. Denver & Rio Grande	Calif.
21. Duluth, South Shore & Atlantic	Mich.
22. Erie	Mass., N. Y., Ohio, R. I.
23. Grand Trunk	Mich., N. Y., Ontario and Quebec, Canada.
24. Great Northern	Mont.
25. Illinois Central	Ala., Iowa, La., Mo., Tenn.
26. International Great Northern	Tex.
27. Lehigh Valley	N. Y.
28. Louisville and Nashville	Fla., Ga., Ky., Tenn.
29. Michigan Central	Conn., Mass., Mich., N. J., N. Y., Ontario & Quebec.
30. Mineral Range	Mich.
31. Minneapolis, St. Paul & Saulte Ste. Marie	Minn., Wis.
32. Missouri Pacific	Mo., Texas.
31. Minneapolis, St. Paul & Saulte Ste Marie	Minn., Wis.
32. Missouri Pacific	Mo., Texas.
33. Nashville, Chattanooga & St. Louis	Fla., Ga., Tenn.
34. New York Central	Conn., Ind., Mass., Mich., N. Y., Ohio.
35. New York, Chicago & St. Louis	N. Y., Ohio, Penn.
36. New York, New Haven & Hartford	Conn., Mass.
37. Norfolk & Western	Va.
38. Northern Pacific	Wash., Wyo.
39. Pennsylvania	Ky., Md., Mich., N. J., N. Y., Ohio, Penn.
40. Richmond, Fredricksburg & Potomac	N. C.
41. Seaboard Air Line	N. C.
42. St. Louis-San Francisco	Ark., Mo.
43. St. Louis Southwestern	Mo.
44. Southern Pacific	Ariz., Calif.
45. Southern	N. C., S. C.
46. Texas & New Orleans	Calif.
47. Temiskaming & Northern Ontario	Ont., Canada.
48. Texas & Pacific	Tex.
49. Union Pacific	Calif., Colo., Kans.
50. Western Pacific	Calif.
STEAMSHIP LINES	
51. New England S/S Co	R. I.
52. Norfolk & Washington S/S Co	Va.
AIR LINES	
53. Stout Air Line	Mich.
54. Universal Air Lines	Mass.
MOTOR COACH LINES	
55. Metropolitan Motor Coach System	Ill., Wis.

Statement of interline ticket sold for transportation of passengers via the North Shore Line in connection with steam railroads, steamship lines, air lines, and motor-coach lines as shown by interline passenger revenue accounts for month of September, 1930—Continued

INTERLINE TICKETS SOLD BY STEAM RAILROADS TO POINTS ON THE NORTH SHORE LINE

Steam railroads	From stations in—
1. Atchison, Topeka & Santa Fe	Calif., Kans.
2. Baltimore & Ohio	Del., Md., N. Y., Ohio, Penn.
3. Boston & Albany	Mass.
4. Boston & Maine	Mass., N. H.
5. Chesapeake & Ohio	Va.
6. Chicago & Alton	Ill., Kans., Mo.
7. Chicago & North Western	Ill.
8. Chicago & Eastern Illinois	Ill., Ind.
9. Chicago, Burlington & Quincy	Iowa, Mo., Neb.
10. Chicago Great Western	Iowa.
11. Chicago, Indianapolis & Louisville	Ind., Ky.
12. Chicago, Milwaukee, St. Paul & Pacific	Mich., Minn., S. D., Wis.
13. Chicago, Rock Island & Pacific	Ill., Iowa.
14. Chicago, St. Paul, Minneapolis & Omaha	Wis.
15. Cleveland, Cincinnati, Chicago & St. Louis	Ind., Ohio.
16. Delaware, Lackawan'a & Western	N. J., N. Y.
17. Duluth, South Shore & Atlantic	Mich.
18. Duluth, Missabe & Northern	Minn.
19. Erie	N. J., N. Y., Ohio.
20. Grand Trunk	Mich.
21. Great Northern	Wash.
22. Illinois Central	Ill., Iowa, Tenn.
23. Kansas City Southern	Kans., Mo.
24. Lehigh Valley	N. Y.
25. Louisville & Nashville	Ky.
26. Michigan Central	Mich.
27. Minneapolis, St. Paul & Sault Ste. Marie	Mich., Minn., Wis.
28. New York Central	Ind., N. Y., Ohio.
29. New York, Chicago & St. Louis	N. Y., Ohio.
30. New York, New Haven & Hartford	R. I.
31. Norfolk & Western	Va.
32. Pennsylvania	Ind., Ky., N. J., N. Y., Ohio, Penn.
33. Pere Marquette	Mich.
34. Wabash	Ill., Mich., Mo.
35. Western Pacific	Calif.

COMPLAINANT'S EXHIBIT 25

Chicago North Shore & Milwaukee Railroad Company

Statement of carload freight interchanged with connecting carriers and local carloads handled during the five years 1926 to 1930, inclusive. (*See Note*)

Connecting carriers and interchange points	1926	1927	1928	1929	1930
Carloads interchanged					
Elgin, Joliet & Eastern Railway: Rondout, Ill.	6,016	8,781	12,576	14,408	13,072
Chicago, Milwaukee, St. Paul & Pacific Railway:					
Rondout, Ill.	.....	1,996	3,830	3,636	3,316
Racine, Wis.	.....	854	2,235	2,905	3,119
Buena Park, Ill.	.....	.....	740	1,144	1,486
Chicago & North Western Railway: Highwood, Ill.	.....	323	281	242	163
Minneapolis, St. Paul & S. Ste. Marie Railroad: Mundelein, Ill.	14	51	129	1,151	1,877
Total carloads interchanged	6,030	12,205	19,791	23,486	23,033
Per cent of total handled	46.6	72.4	73.3	77.7	86.9
Carloads—Local					
Total carloads—Local	6,917	4,664	7,202	6,758	3,451
Per cent of total handled	53.4	27.6	26.7	22.3	13.1
Total carloads handled	12,947	16,869	26,993	30,244	26,494

NOTE.—Excludes carload freight handled in switching service.

COMPLAINANT'S EXHIBIT 27

Chicago North Shore & Milwaukee Railroad Company

Statement of carload freight handled in local, interline, and bridge traffic during the year ended December 31, 1930. (*See Note A*)

Year 1930	Originating on line				Received from connecting carriers				Total interline (See Note B)		Total carload traffic	
	Local traffic		Interline traffic		Interline traffic		Bridge traffic					
	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons
January	37	1,777.1	60	1,625.7	806	33,768.1	733	31,408.2	1,599	66,802.0	1,636	68,579.1
February	94	4,583.5	38	835.2	807	34,221.9	611	25,386.3	1,456	60,443.4	1,550	65,026.9
March	209	9,655.3	52	1,173.4	730	30,962.5	675	26,924.1	1,457	59,060.0	1,666	68,715.3
April	197	8,320.3	94	2,414.0	914	39,178.9	607	21,240.6	1,615	62,833.5	1,812	71,153.8
May	307	13,053.9	48	1,071.3	952	41,718.3	723	23,867.7	1,723	66,657.3	2,030	79,711.2
June	687	30,667.9	96	2,916.1	1,457	71,461.4	820	29,949.4	2,373	104,376.9	3,060	134,993.8
July	450	23,768.7	89	3,162.9	1,449	67,112.0	699	27,542.3	2,237	97,817.2	2,687	121,585.9
August	495	27,885.8	97	2,872.4	1,516	74,070.0	665	28,663.1	2,278	105,605.5	2,773	133,491.3
September	518	30,048.0	106	2,838.3	1,524	72,612.2	772	28,325.4	2,402	103,775.9	2,920	133,823.9
October	278	13,003.4	161	3,581.0	1,284	56,972.5	988	37,232.2	2,433	97,785.7	2,711	110,789.1
November	82	3,928.9	211	4,281.4	1,044	46,735.8	726	28,226.9	1,981	79,244.1	2,063	83,173.0
December	107	4,837.5	95	2,688.3	782	32,221,1	602	23,756.7	1,479	58,666.1	1,586	63,503.6
Total for year	3,461	171,530.3	1,147	29,460.0	13,265	601,034.7	8,621	332,522.9	23,033	963,017.6	26,494	1,134,547.9
Per cent of total carloads	13.1%		4.3%		50.1%		32.5%		(86.9%)		100%	
Per cent of total C. L. tonnage		15.1%		2.6%		52.9%		29.4%		(84.9%)		100%

NOTE A.—Excludes carload freight handled in switching service.

NOTE B.—Comprises all carload freight interchanged with connecting carriers, including bridge traffic; all such interchanges were made with steam railroads.

Chicago North Shore & Milwaukee Railroad Company

Statement of Carload Freight Showing Commodities Transported in Local, Interline, and Bridge Traffic during Month of September, 1930.
(See Note A)

No.	Commodity group or class	Originating on line				Received from connecting carriers				Total interline (see Note B)		Total carload traffic	
		Terminating on line		Delivered to connecting carriers		Terminating on line		Delivered to connecting carriers					
		Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons
	GROUP I.—*Products of agriculture (C. L.)*												
50	Flour, wheat					1	20.8	2	51.4	3	72.2	3	72.2
61	Mill products, n. o. s.							2	45.3	2	45.3	2	45.3
70	Hay and alfalfa					1	11.0			1	11.0	1	11.0
140	Cabbage			35	472.9					35	472.9	35	472.9
141	Onions			19	301.6					19	301.6	19	301.6
164	Products of agriculture, n. o. s.							1	12.3	1	12.3	1	12.3
	Totals			54	774.5	2	31.8	5	109.0	61	915.3	61	915.3
	GROUP II.—*Animals and products*												
	None.												
	GROUP III.—*Products of mines*												
290	Anthracite coal					20	743.8			20	743.8	20	734.8
300	Bituminous coal			1	54.7	252	12,889.3	250	12,543.8	503	25,487.8	503	25,487.8
310	Coke					53	1,811.2	1	36.9	54	1,848.1	54	1,848.1
350	Gravel and sand (other than glass or molding)	133	6,957.2			529	31,364.1	7	318.7	536	31,682.8	669	38,640.0
351	Stone, broken, ground, or crushed	381	22,974.3	7	459.7	2	113.8			9	573.5	390	23,547.8
352	Stone, rough, n. o. s.					20	738.0			20	738.0	20	738.0
	Totals	514	29,931.5	8	514.4	876	47,660.2	258	12,899.4	1,142	61,074.0	1,656	91,005.5

Statement of Carload Freight Showing Commodities Transported in Local, Interline, and Bridge Traffic during Month of September, 1930. (See Note A)—Continued

No.	Commodity group or class	Originating on line				Received from connecting carriers				Total interline (see Note B)		Total carload traffic	
		Terminating on line		Delivered to connecting carriers		Terminating on line		Delivered to connecting carriers					
		Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons
	GROUP IV.—*Products of forests*												
401	Posts, poles, and piling					10	224.5	144	3,827.4	154	4,051.9	154	4,051.9
402	Wood (fuel)					1	20.7			1	20.7	1	20.7
430	Lumber, shingles, lath					29	689.5	10	230.6	39	920.1	39	920.1
431	Box, crate, and cooperage materials					1	16.4	2	30.7	3	47.1	3	47.1
443	Products of forests, n. o. s.							3	41.2	3	41.2	3	41.2
	Totals					41	951.1	159	4,129.9	200	5,081.0	200	5,081.0
	GROUP V.—*Manufactures and miscellaneous*												
450	Petroleum oils, refined, and all other gasolines			2	69.2	39	1,078.7	27	754.2	68	1,902.1	68	1,902.1
451	Fuel, road, and petroleum residual oils, n. o. s.					62	2,160.9	2	52.6	64	2,213.5	64	2,213.5
452	Lubricating oils and greases					1	15.3	9	190.8	10	206.1	10	206.1
500	Rails, fastenings, frogs and switches					6	266.1			6	266.1	6	266.1
510	Cast-iron pipe and fittings	1	26.5			6	160.7	22	456.1	28	616.8	29	643.3
511	Iron and steel pipe and fittings, n. o. s.					5	214.3	201	7,333.3	206	7,547.6	206	7,547.6
513	Iron and steel, rated 5th class, n. o. s. (also tin and terne plate)					3	72.5	3	88.0	6	160.5	6	160.5
530	Machinery and boilers			1	6.1					1	6.1	1	6.1
540	Cement, natural or Portland (building)					117	6,098.6	18	761.9	135	6,860.5	135	6,860.5
550	Brick, common	3	90.0	39	1,428.0	4	138.3			43	1,566.3	46	1,656.3
551	Brick, n. o. s., and building tile					6	229.3	1	27.4	7	256.7	7	256.7
552	Artificial stone n. o. s.					92	2,965.8			92	2,965.8	92	2,965.8
560	Lime, common (quick or slaked)					10	150.0			10	150.0	10	150.0
561	Plaster (stucco or wall) and dry kalsomine					3	101.3			3	101.3	3	101.3
570	Sewer pipe and drain tile (not metal)					70	1,059.2	11	264.6	81	1,323.8	81	1,323.8
583	Railway car wheels, axles, and trucks					1	20.0			1	20.0	1	20.0
592	Automobiles and auto trucks, K. D. and parts n. o. s.					5	104.2			5	104.2	5	104.2
593	Automobile and auto truck tires					1	17.4			1	17.4	1	17.4
630	Ice					8	293.7			8	293.7	8	293.7
640	Fertilizers, n. o. s.					1	15.0			1	15.0	1	15.0
650	Newsprint paper					4	111.4			4	111.4	4	111.4
662	Explosives, n. o. s.							3	38.0	3	38.0	3	38.0

680	Canned food products, n. o. s.					2	42.5	2	39.2	4	81.7	4	81.7
694	Paper bags and wrapping paper							2	46.2	2	46.2	2	46.2
695	Paperboard, pulpboard, and wallboard (paper)					1	24.4	16	368.3	17	392.7	17	392.7
701	Manufactures and miscellaneous, n. o. s.			2	46.1	158	8,629.5	33	766.5	193	9,442.1	193	9,442.1
	Totals	4	116.5	44	1,549.4	605	23,969.1	350	11,187.1	999	36,705.6	1,003	36,822.1
	Grand total, carload traffic	518	30,048.0	106	2,838.3	1,524	72,612.2	772	28,325.4	2,402	103,775.9	2,920	133,823.9
	Per cent of total carloads	17.8%		3.6%		52.2%		26.4%		(82.2%)		100.0%	
	Per cent of total C. L. tonnage		22.4%		2.1%		54.3%		21.2%		(77.6%)		100.0%

NOTE A.—Excludes carload freight handled in switching service.

NOTE B.—Comprises all carload freight interchanged with connecting carriers, including bridge traffic; all such interchanges were made with steam railroads.

70 COMPLAINANT'S EXHIBIT 29

Chicago North Shore & Milwaukee Railroad Company

Statement of cars interchanged between C., N. S. & M. Ry., and connecting steam railroads in one day, viz., September 30, 1930

Name of connecting carrier and interchange point	Received by C. N. S.		Delivered by C. N. S.	
	Loaded	Mty.	Loaded	Mty.
E. J. & E. at Rondout, Ill.	41	4	7	49
C. M. St. P. & P. at Rondout, Ill.	8			23
C. M. St. P. & P. at Racine, Wis.	9	16	11	
C. M. St. P. & P. at Buens Park, Ill.	3			6
C. & N. W. at Highwood, Ill.*				
M. St. P. & S. S. M. at Mundelein, Ill.	1		1	2

* Cars were interchanged on other days during Sept., 1930.

71 COMPLAINANT'S EXHIBIT 30

Chicago North Shore and Milwaukee Railroad Company

Summary of equipment owned as of September 30, 1930

Type of equipment	With electric equipment	Without electric equipment	Total
Passenger cars:			
Passenger cars—Local service	148	20	168
" " City service	44		44
Dining cars	2	7	9
Parlor cars		5	5
Total	194	32	226
Freight cars:			
Merchandise despatch	41		41
" " refrigerator		6	6
Flat cars		20	20
Special flat cars		14	14
Gondolas		* 88	88
Side dumps		70	70
Box cars		3	3
Cabooses		6	6
Total	41	207	248
Company service:			
Work cars	3	3	6
Snow plows		2	2
Sweepers	4		4
Other cars	2	24	26
Total	9	29	38
Locomotives: Electric	7		7

* 35 are suitable for interchange with steam railroads.

72 COMPLAINANT'S EXHIBIT 33

Chicago North Shore & Milwaukee Railroad Company

Summary of per diem for month of September, 1930

	Amount
PAID TO RAILROAD	
1. Atchison, Topeka & Santa Fe	$22.00
2. Atlantic Coast Line	1.05
3. Baltimore & Ohio	89.00
4. Belt Ry. of Chicago	17.00
5. Canadian National	16.00
6. Canadian Pacific	41.00
7. Chicago and North Western	406.00
8. Central R. R. of New Jersey	7.00
9. Central Vermont	5.00
10. Chicago & Illinois Midland	5.00
11. Colorado & Southern	9.00
12. Chicago, Indianapolis & Louisville	7.00
13. Chicago & Illinois Western	31.00
14. Central of Georgia	6.00
15. Chicago Great Western	10.00
16. Cambria & Indiana	4.00
17. Chicago & Western Indiana	3.00
18. Chicago & Alton	14.00
19. Chicago & Eastern Illinois	130.00
20. Chesapeake & Ohio	233.00
21. Chicago, Burlington & Quincy	191.30
22. Chicago, Milwaukee, St. Paul and Pacific	1,656.87
23. Chicago, Rock Island & Pacific	27.00
24. Cincinnati Northern	5.00
25. Cleveland, Cincinnati, Chicago and St. Louis	152.00
26. Delaware, Lackawanna & Western	27.00
27. Duluth, South Shore & Atlantic	3.00
28. Denver & Rio Grande Western	2.00
29. Elgin, Joliet & Eastern	224.00
30. Erie	65.00
31. Fort Worth & Denver City	2.00
32. Great Northern	12.00
33. Gulf, Mobile & Northern	2.00
34. Illinois Central	771.96
35. International—Great Northern	5.00
36. Lehigh Valley	4.00
37. Louisville & Nashville	158.00
38. Michigan Central	35.00
39. Minn., St. Paul & Sault Ste. Marie (Soo)	5.00
40. Missouri-Kansas-Texas	1.00
41. Missouri Pacific	57.00
42. Minneapolis & St. Louis	3.00
43. Mobile & Ohio	10.00
44. New York Central	98.00
45. Norfolk & Western	98.00
46. New Jersey, Indiana & Illinois	2.00
47. New York, Chicago & St. Louis (NKP)	72.00
48. New York, Susquehanna & Western	4.00
49. New York, New Haven & Hartford	5.00
50. New York, Ontario & Western	3.00
51. Nashville, Chattanooga & St. Louis	4.00
52. Northern Pacific	33.00
53. Pennsylvania	162.00
54. Pere Marquette	2.00
55. Pittsburgh & Lake Erie	24.00
56. Peoria & Eastern	14.00
57. Richmond, Fredericksburg & Potomac	6.00
58. Reading	35.00
59. St. Louis-San Francisco	88.00
73 60. St. Louis-Southwestern	17.00
61. Southern Pacific	51.00
62. Southern	18.00
63. Texas & New Orleans	13.00
64. Union Pacific	40.00
65. Virginian	48.00
66. Wabash	73.00
67. Wheeling & Lake Erie	6.00
68. Western Pacific	11.00
69. Wichita Valley	3.00
	5,397.13
PRIVATE CAR COMPANIES	
70. American Refrigerator Transit Co. (ART)	$0.66
71. American Steel Car Lines, Inc. (ASIX)	1.62
72. Continental Oil Co. (CONX)	2.82
73. California Disptach Line (CDLX)	.18
74. Crystal Oil Refining Corp. (CORX)	1.26

Summary of per diem for month of September, 1930—Continued

	Amount
PRIVATE CAR COMPANIES—continued	
75. Deep Rock Oil Corp. (DRX)	$0.54
76. Empire Oil & Refining Co. (EGX) (ERIX)	1.71
77. General American Tan Car Corp. (GATX)	4.20
78. Indiana Refining Co. (IRCS) (WTLX)	1.53
79. Taxman Refining Co., Inc. (JMTX)	1.26
80. Johnson Oil Refining Co. (JORX)	1.08
81. Keith Ry. Equipment Co. (KTX)	.36
82. Kanotex Refining Co., The (KOTX)	2.88
83. Globe Oil & Refining Co. of Illinois (LMRX)	.54
84. North American Car Corp. (NATX)	1.92
85. Northern Refrigerator Line, Inc. (NRC)	46.86
86. National Tank Car Co. (NTCX)	.18
87. Pure Oil Co. (POX)	1.17
88. Peerless Transit Line (PTLX)	.72
89. Pennsylvania Tank Line (PTX)	.21
90. Panhandle Refining Co. (PHRX)	1.44
91. Producers & Refiners Corp. (PARX)	.09
92. Shell Petroleum Corp. (RPX)	6.39
93. Standard Transit Co. (STCX)	3.60
94. Sinclair Refining Co. (SDRX)	1.86
95. Shippers Car Line Corp. (SHPX)	.81
96. Tidal Refining Co. (TIDX)	1.44
97. Union Tank Car Co. (UTLX)	4.48
98. Universal Atlas Cement Co. (UPCX)	.57
99. Tidal-Western Oil Corp. (WROX)	1.62
100. Gulf States Corp. (WOAX)	.54
Total mileage	94.54
Total per diem	5,397.13
	5,491.67

74 COMPLAINANT'S EXHIBIT 36

Chicago North Shore & Milwaukee Railroad Company

Freight train movements selected from daily freight train reports for the last 10 days of September, 1930, and May 23, 1930

Date	Locomotive No.	Left	Number of cars in train		Arrived	Number of cars in train		Miles
			Loaded	Empty		Loaded	Empty	
September 21st	456	Rondout	6		Pettibone	6		3.95
"	456	Rondout	14	2	Pettibone	14	2	3.95
"	456	Pettibone	11		Racine	10		27.91
September 22nd	454-453	Racine "Y"	18	11	Pettibone	17	13	27.91
"	454-453	Pettibone	13	12	Six Mile		3	35.70
September 23rd	455	Rondout	28		Pettibone	28		3.95
"	455	Pettibone	4	1	Mundelein	4		9.68
September 24th	453-454	Racine "Y"	25	12	Pettibone	23	12	27.91
September 25th	455	Rondout	15	1	Pittibone	15	1	3.95
"	455	Great Lakes		4	Rondout		16	5.16
"	455	Mundelein	6	1	Rondout	6	1	5.73
September 26th	455	Pettibone	1	14	Rondout	1	14	3.95
"	455	Rondout	32		Pettibone	32		3.95
"	455	Mundelein	3	7	Pettibone	3		9.68
September 27th	455	Pettibone	10		Northfield	8	2	16.20
"	455	Dempster		6	Rondout		18	19.16
"	455	Rondout	8	2	Pettibone	8	2	3.95
September 28th	456	Rondout	21	6	Pettibone	21	6	3.95
"	456	Pettibone	10		Edison Ct	10		3.73
September 29th	456	Pettibone	2	9	Rondout	2	9	3.95
"	456	Rondout	4		Mundelein	10		5.73
"	456	Mundelein	20	1	Rondout	20	1	5.73
"	456	Rondout	15		Pettibone	15		3.95
September 30th	455	Pettibone	1	24	Oak Creek		3	40.33
"	455	Quarry	13	1	Pettibone	18	1	30.58
"	455	Pettibone	8	1	Rondout	8	1	3.95
May 23	456	Rondout	41	1	Pettibone	41	1	3.95

NOTE.—Sundays—Sept. 21st and 28th.

75 COMPLAINANT'S EXHIBIT 39

Chicago North Shore & Milwaukee Railroad Company

Statement of traffic department personnel and monthly salaries as of September 30, 1930

Name	Title	Headquarters	Rate
Roy Thompson	Traffic manager	Chicago	$500.00
C. H. Schildgen	Industrial agent	"	*310.00
C. G. Finnegan	Asst. " "	Milwaukee	*275.00
R. S. Amis	Gen'l. passenger agent	Chicago	325.00
Edmond F. Weber	Gen'l. freight agent	"	310.00
J. M. Michaels	Asst. gen'l. passenger agt.	"	300.00
T. F. Gnevo	" " " "	Milwaukee	300.00
Gorman Bennett	Asst. gen'l. freight agt	Chicago	325.00
F. J. Kelly	Frt. traffic rep	"	250.00
E. A. Stephens	" " "	"	250.00
D. F. Lyons	" " "	"	250.00
F. J. Devaney	" " "	"	200.00
C. G. Miles	" " "	Milwaukee	175.00
Wm. Lewellen	Pass. traffic rep	Chicago	200.00
F. J. Burkard	Div. freight agent	Milwaukee	275.00
J. T. Schomp	General agent	Chicago	250.00
H. R. Erickson	Traffic agent	Kenosha	200.00
H. C. Elliott	General agent	Chicago	200.00
P. J. Butler	Traffic agent	Waukegan	200.00
J. E. Stemper	City passenger agent	Milwaukee	175.00
H. J. Phillips	Chief clerk	Chicago	175.00
Ed. A. Dreis	Ass't. chief clerk	"	140.00
Mary Dunne	Ticket seller	"	175.00
Helen M. Daly	Dictaphone operator	"	125.00
Leota Thrasher	"	"	115.00
C. M. Hanlon	File clerk	"	140.00
Mary Grady	Stenographer	"	110.00
James E. Walsh	Typist	"	100.00
R. M. Zinnen	Chief clerk	Milwaukee	175.00
Mary Mergener	Stenographer	"	125.00

* Serves jointly for C., N. S. & M. R. R., Chicago, South Shore & South Bend R. R., and Chicago, Aurora & Elgin R. R., and salary prorated.

81 DEFENDANT'S EXHIBIT 6

Chicago North Shore and Milwaukee Railroad Company

Miles of line owned and operated December 31, 1930

Name of line and location	1st main track, No. bound	2nd main track, So. bound	Yard and other tracks	Total
ILLINOIS				
Line owned				
Main line: Laurel Ave., Wilmette, to State line	31.7748	31.7748	11.7247	75.2743
Skokie Valley line: Howard St., Chgo., to No. Chgo. Jct., No. Chgo.	26.2952	26.3104	16.1502	68.7558
Libertyville branch: Lake Bluff to Mundelein	8.8092	8.2259	4.1202	21.1553
Waukegan branch: No. Chgo. Jct., No. Chgo., to Waukegan Terminal	3.2940	3.0223	.8102	7.1265
Waukegan City line: All of Waukegan East line except tracks from No. Chgo. Jct. to Waukegan Terminal	4.1333	.....	.6665	4.7998
Total, owned in Illinois	74.3065	69.3334	33.4718	177.1117
Line operated				
Laurel Ave., Wilmette, to 63rd St., Chicago	24.8000	24.8000	0.2300	49.8300
Total, Illinois owned and operated	99.1065	94.1334	33.7018	226.9417
WISCONSIN				
Line owned				
Main line: State line to Harrison St., Milwaukee, and including Milwaukee Terminal	35.9213	35.3392	8.8159	80.0764
Line operated				
Harrison St. to 2nd & Grand Aves., Milwaukee	3.35356	3.3536	0.0910	6.7982
Total, Wisconsin owned and operated	39.2.49	38.6928	8.9069	86.8746
Grand total miles, owned and operated	138.3514	132.8262	42.6087	313.8163

OFFICE OF AUDITOR OF CAPITAL EXPENDITURES, *Jan. 8, 1931.*

Miles of line owned and operated December 31, 1930—Continued

82 OWNED

Location	1st main track, No. bound	2nd main track, So. bound	Yard and other tracks	Total
MAIN LINE, ILLINOIS				
Shore line:				
City of Evanston	7.2846	7.2846	0.4962	15.0654
New Trier Township	6.8645	6.8645	5.2750	19.0040
Deerfield Township	6.1501	6.1501	1.6903	13.9905
Total, Shore line	20.2992	20.2992	7.4615	48.0599
Skokie Valley line:				
City of Evanston	1.8217	1.8360	0.0757	3.7334
Niles Township	4.8632	4.8632	4.8326	14.5590
New Trier Township	2.4774	2.4774	3.0179	7.9727
Northfield Township	4.0068	4.0068	2.0389	10.0525
Deerfield Township	6.6900	6.6900	1.1908	14.5708
Shields Township	6.4361	6.4370	4.9943	17.8674
Total, Skokie Valley line	26.2952	26.3104	16.1502	68.7558
Main line:				
Waukegan Township	5.9967	5.9967	3.5200	15.5134
Benton Township	5.4789	5.4789	0.7432	11.7010
Total, main line	11.4756	11.4756	4.2632	27.2144
Total, Ill. main line	58.0700	58.0852	27.8749	144.0301
MAIN LINE, WISCONSIN				
Main line:				
Pleasant Prairie Twp	6.0628	6.0628	1.3994	13.5250
Somers Township	6.1431	6.1431	0.7430	13.0292
Mount Pleasant Twp	6.2227	6.2227	2.8312	15.2766
Caledonia Township	6.3962	6.3962	0.4883	13.2807
Oak Creek Township	6.4231	6.4231	0.3985	13.2447
Lake Township	4.6734	4.0913	2.4231	11.1878
Milwaukee Terminal			0.5324	0.5324
Total, Wis. main line	35.9213	35.3392	8.8159	80.0764
Total, main-line miles	93.9913	93.4244	36.6908	224.1065
Libertyville line:				
Shields Township	2.5047	2.2695	0.7052	5.4794
Libertyville Township	6.3045	5.9564	3.4150	15.6759
Total, Libertyville line	8.8092	8.2259	4.1202	21.1553
Waukegan City line:				
Shields Township	0.7771	0.7771	0.4167	1.9709
Waukegan Township	6.6502	2.2452	1.0600	9.9554
Total, Waukegan line	7.4273	3.0223	1.4767	11.9263
Total, Branch line miles	16.2365	11.2482	5.5969	33.0816
Total miles owned	110.2278	104.6726	42.2877	257.1881

OPERATED

LINE OPERATED				
WISCONSIN				
Harrison St. to 2nd & Grand Aves., Milwaukee	3.3536	3.3536	0.0910	6.7982
ILLINOIS				
Laurel Ave., Wilmette, to 63rd St., Chicago	24.8000	24.8000	0.2300	49.8300
Total miles operated	28.1536	28.1536	0.3210	56.6282
Grand total miles owned and operated	138.3814	132.8262	42.6087	313.8163

83 **Chicago North Shore and Milwaukee Railroad Company**

Statement of route mileage operated in city streets along or in the pavement, 5–19–31

	Between-city service in city street, track zone paved	Between-city service in city street, no pavement	Between-city service in city street, adjacent to pavement	City and between-city service in city streets, adjacent to pavement	City and between-city service in city streets, trk. zone paved	City service exclusively in paved streets
Chicago, Ill		36,485′				
Wilmette, Ill	4,218′	894′				
Kenilworth, Ill	646′	700′				
Winnetka, Ill			1,565′			
Hubbard Woods, Ill	1,166′					
Glencoe, Ill			5,112′			
Highland Pk., Ill	602′		2,033′			
Lake Forest, Ill			1,425′			
North Chgo., Ill			1,325′	2,580′		
Waukegan, Ill	1,426′				6,300′	21,836′
Mundelein, Ill			1,155′			
Milwaukee, Wis					14,309′	3,379′
Total feet	8,058′	38,079′	12,615′	2,580′	20,609′	25,215′
Total miles	1.526	7.213	2.389	0.489	3.90	4.77

Total route miles operated in city streets ..... 20.29 miles— 14.66 per cent.
Total route miles operated on private R. of W .. 118.09 " — 85.34 " "
Total route miles operated ..... 138.38 " —100. " "

84 **DEFENDANT'S EXHIBIT No. 22**

Chicago North Shore and Milwaukee Railroad Company

Statement of route mileage on which it is impossible to handle freight on account of franchise restrictions

Total route mileage operated	138.38
Total route milage on which freight can be handled	106.91
Total route mileage on which freight can not be handled due to franchise restrictions and clearances	31.47
% of restrictions and clearance limitation mileage to total route mileage	22.73%

85 [Omitted.]

86 **In United States District Court, Northern District of Illinois, Eastern Division**

No. 10067

UNITED STATES OF AMERICA

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

Findings of fact and conclusions of law

March 24, 1932

The above-entitled suit coming on to be heard, and the court having heard the evidence and arguments of counsel, and briefs having been filed, and the court being advised in the premises, now finds as

FINDINGS OF FACT

(1) That this suit was brought and the prayer seeks only to enjoin and restrain the respondent in the future from issuing any capital stock, bonds, or other evidence of indebtedness, collectively termed "securities," and from assuming any obligations or liability as guarantor, endorser, surety, or otherwise, in respect of the securities of any other person or corporation unless respondent shall have first applied for and obtained the approval and appropriate order from the Interstate Commerce Commission.

(2) CORPORATE HISTORY OF CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY:

The Chicago North Shore and Milwaukee Railroad Company, and the predecessor corporation, owning and operating, subsequent to March 1, 1920, the properties now owned and operated by it, is and were corporations organized, chartered, and existing under and by virtue of the Statutes of the State of Illinois, sometimes described as the General Railroad Laws of the State of Illinois, and more particularly described as "An act to provide for the incorporation of associations that may be recognized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so recognized, and authorizing the same and all railroad companies of the State to own and hold the stock and securities of railroad companies of other States owning a connecting line," being chapter 114 of Cahill's 1921 Illinois Revised Statutes.

(3) There are but two statutory enactments in Illinois under which rail carriers may be organized; one is the general railroad act and the other is the general incorporation act. The general incorporation act is commonly used for the organization of street railways and under it the street railway has limited powers of eminent domain. Practically all rail carriers, save street railways, organized in Illinois are organized under the so-called general railroad
87 act because of the very limited powers of eminent domain given corporations organized under the general incorporation act. The Chicago Rapid Transit Company, which operates the intramural city service over the elevated structure in Chicago, is incorporated under the general railroad act of Illinois.

(4) The Bluff City Electric Street Railway Company, a street railroad, was the original company out of which the properties of the respondent developed. The Bluff City line was in existence prior to 1905. On July 1, 1916, the receiver of the Chicago and Milwaukee Electric Railroad Company of Illinois and the Chicago and Milwaukee Electric Railroad Company of Wisconsin sold at receiver's sale these two properties to the Chicago North Shore and Milwaukee Railroad. As the result of a later reorganization, at 12.01 a. m. on July 1, 1923, the railroad property of that company was conveyed to the Chicago North Shore and Milwaukee Railroad Company. On October 6, 1924, this latter company was consolidated

with the Chicago North Shore and Northern Railroad, an Illinois intrastate railway, under the corporate name, Chicago North Shore and Milwaukee Railroad Company, the respondent, which has owned and operated the properties at all times since then.

(5) Type of construction of tracks, bridges, roadbed, and other physical properties of the Chicago North Shore and Milwaukee Railroad Company:

1. Description of respondent's line:

(a) The respondent operates a high-speed electrified railroad between Chicago, Illinois, and Milwaukee, Wisconsin, serving States with a total population of approximately four million. The main terminals are in Chicago and Milwaukee, with branch-line terminals in the cities of Waukegan, Illinois, and Mundelein, Illinois.

(b) The operation in Chicago is over the elevated tracks of the Chicago Rapid Transit Company from 63rd and Dorchester Streets on the south side of Chicago, northerly through the Loop district, where the main Chicago passenger terminal is located, to a point at Leland and Wilson Avenues on the north side of Chicago, a distance of approximately 16 miles; thence northerly through Chicago and Evanston to Wilmette, a distance of approximately eight miles over elevated, dirt-fill tracks, leased from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and jointly used with the Rapid Transit Company.

(c) The so-called "Shore line" route continues north from Linden Avenue in Wilmette through Kenilworth, Winnetka, Olencoe, Highland Park, Highwood, Lake Forest, Lake Bluff, and North Chicago Junction, where it joins with the Skokie Valley line to Zion City and the State line, a distance of 31.77 miles.

(d) The "Skokie Valley line" departs from the Shore line route at Howard Street, the north city limit of Chicago, and runs west about three miles to Niles Center, and thence northerly, paralleling the Shore line, to a junction with the Shore line at North Chicago Junction, a distance of 36.29 miles.

88 (e) From the State line the road continues north via Kenosha and Racine to Harrison Street, Milwaukee, a distance of 35.92 miles. From this point the operation is through the streets, over the tracks of the Chicago and Milwaukee Electric Railway Company, which company is owned by the respondent, a distance of 2.67 miles. Street cars also operate over a small portion of the line from Harrison Street to Oklahoma Boulevard, and such operation is under an ordinance authorizing a predecessor of respondent to "operate its interurban cars" over such tracks. Such operation is on the streets in common with vehicular traffic and is controlled in part by "stop and go" lights.

(f) The "Libertyville branch" extends from Lake Bluff on the Shore line to Rondout, Libertyville, and Mundelein, a distance of 8.8 miles.

(g) The "Waukegan branch" extends from North Chicago Junction into the city of Waukegan, a distance of 3.29 miles. Respondent

performs all of the street-car service in Waukegan. Approximately 12 cars are used in this service. The Chicago-Waukegan interurban express trains use the street-car tracks in Waukegan. The Waukegan street cars use the main-line tracks south from Waukegan to Great Lakes Naval Training Station in common with the respondent's interurban express trains. The operation of the street cars and of the Chicago-Waukegan interurban express trains in Waukegan is in common with other vehicular traffic on the streets. Passengers on the interurban trains of respondent to and from Waukegan are given free transfers which permit them to ride to any point on the street-car system within Waukegan.

(h) The total route miles of main line owned and operated by the respondent is 138.38. The total miles of second track is 132.82. The total miles of yard and other track is 42.60. The total number of miles of all track is 313.81. The total route miles of track operated in city streets is 20.229, which is 14.66 per cent of the total route miles of track. Respondent operates on many of the city streets in common with street cars and vehicular traffic.

2. Tracks and rights of way:

(a) The tracks of the respondent are standard gauge, the owned line for train operation being all double-track with the exception of about 0.6 mile just south of Milwaukee and about 0.6 of a mile on the Libertyville or Mundelein branch.

(b) The operation over the lines of the Chicago Rapid Transit Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is double-track and multiple track. The operation in Milwaukee is double-track.

(c) The rights of way and tracks of the Chicago and North Western Railway Company parallel the respondent's right of way and tracks, the tracks of these two carriers reaching the same cities between Chicago and Milwaukee.

89 (d) Of the respondent's total owned tracks, 2.4 miles are laid in paved streets; 0.197 miles are laid in unpaved portion of streets; 2.8 miles are laid in unpaved street area, the track zone not being used for street purposes. In Milwaukee the respondent's passenger trains move over 2.6 miles of track in streets, the tracks being owned by the Chicago and Milwaukee Electric Railway Company, which company in turn is owned by the respondent. These tracks are used for street-railway service.

(e) In Chicago the respondent's passenger and merchandise despatch trains operate over tracks owned by the Chicago Rapid Transit Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, under trackage leases or agreements with those carriers. The miles of track included in this operation, respectively, are: First main track, 16.97 and 7.83; total trackage so operated, 33.94 and 15.89, or a total of 39.38 miles of track not owned but used by the respondent under lease or agreement with those carriers. The operation over the tracks of the Chicago Rapid Transit Company is under a long-term lease.

(f) Respondent owns its right of way from Wilmette to Milwaukee, except for short distances, aggregating about three miles, in a few municipalities through which it runs on public thoroughfares. It owns all of the right of way of the Skokie Valley line.

(g) The respondent has more than one-half mile of right of way in the Fort Sheridan Military Reservation, which it enjoys under perpetual easement granted by Congress. (See 42 Stat. L. 622–623.)

(h) From Waukegan, north to Milwaukee, the right of way averages about 100 feet in width. South from North Chicago to the connection with the line of the Chicago Rapid Transit Company the right of way averages in width from 25 to 100 feet, the greater part being about 50 feet.

(i) The right of way on the Skokie Valley line is wide enough to accommodate a four-track line, part of it being used for the steel towers carrying the high-tension transmission line of the Public Service Company of Northern Illinois.

(j) Respondent has acquired part of its right of way through the exercise of the power of eminent domain.

(k) The respondent's roadways and tracks in many places follow the contour of the ground. Its track consists of ties and steel rails of varying weights and types. In many places it uses the high T and girder type rail designed especially for use in paved streets. It also uses frogs and switches designed for paved city track construction. Special steel ties are used for track in pavement.

(l) Respondent has many curves in its main-line tracks as well as shop and yard tracks of 100-foot radius or less. This curvature in tracks is common to electric railways which must operate around street corners. Trains of steam railroads could not operate around such curves.

90 3. Bridges:

(a) Respondent's bridges are built according to steam railway specifications and standards and are suitable for the operation of standard freight cars of steam railroads.

(b) On the west side, from North Chicago Junction to Milwaukee, the bridges are built according to Cooper's E–40 specifications, and have a standard load capacity sufficient to support two locomotives weighing 146 tons each with the same distance between the front and rear axle and stipulated or uniform load of 4,000 pounds per foot.

(c) The bridges on the "Shore line" route between Chicago and North Chicago Junction, which is mainly a passenger line, are built according to Cooper's E–30 specifications, and will support two locomotives weighing 106 tons each and a load of 3,000 pounds per lineal foot.

(d) The carrying strength or load capacity of the bridges on its owned main line will support the average steam railroad train.

4. Roadbed:

(a) The grades on the "Shore line" of the respondent generally follow the topography of the ground, being less than 0.4 of one per

cent on most of the tracks. The roadbed of the "Shore line" is suitable for the operation over it of standard freight cars of steam railroads.

(b) Grades as high as 7 per cent are encountered in the main line track of respondent. The Skokie Valley line connects at Howard Street with the Shore line and has a grade of 3 per cent at that point. It also has a grade of 1.6 over a viaduct or bridge that crosses the highway near the sanitary district plant. Respondent uses a short temporary crossover track during construction work in paved streets. All main line trains operate over these temporary crossover tracks. It would be impossible for steam line trains to use this type of crossover track.

(c) The roadbed is ballasted with rock, slag, gravel, and cinder ballast. More than three-fourths of the Skokie Valley line is rock ballasted. The ballast and crossties are the same as those ordinarily used by steam roads. Except for short distances, where steel ties or combination steel and wood ties are necessary, the ties used are oak, cedar, and pine.

(d) Respondent's signals, switches, and crossing-protection devices are similar to those used on steam railways generally, the respondent's line being equipped with the most modern railroad block signal systems.

5. Interchange track connections:

The tracks of the respondent are physically connected with the tracks of four steam railroads at thirteen points on its line and with three electric railroads at three points on its line. Carload
91 freight shipments can be and are interchanged with steam railroads, without breaking bulk, at eight different points. The respondent has interchange track connections with the Soo Line, Elgin, Joliet, and Eastern, the Chicago and North Western, and the Chicago, Milwaukee, St. Paul, and Pacific, all steam railroads. The total capacity of the respondent's interchange tracks at these interchange points is aproximately 365 freight cars.

6. Industry tracks:

(a) Respondent has 108 industry, team, and switch tracks at 37 stations on its line, which serve about 40 different types of industries and the general public. The respondent constructed more than three miles of sidetracks into industrial yards to increase its facilities for handling carload freight.

(b) In 1930 the respondent had 12 new industries located on its line. These industries are engaged in manufacturing or handling of coal, lumber, and building materials.

(c) The largest industrial or team-track facilities are at Waukegan, where the respondent has 14 industry or team tracks with a capacity of 209 freight cars or 155 passenger cars. Similar tracks at North Chicago will accommodate 109 cars; at Racine Quarry, 145 cars; at Crawford Avenue, 174 cars; at Kostner Avenue, 111 cars; and at Liberty Lake, 127 cars.

(d) The total capacity of respondent's industry or team tracks is 1,801 freight cars or 1,364 passenger cars.

7. Yards and terminals:

(a) Respondent has 19 passing tracks with lengths varying from 300 feet to 1,900 feet, many of which are used as team or storage tracks, as well as for train passing.

(b) The respondent has a freight classification yard at Pettibone which it used for classifying cars of inbound and outbound freight and making up trains for further movement. This yard consists of 11 tracks and has a capacity of 161 freight cars.

8. Passenger stations and freight depots:

(a) The respondent maintains on its entire system of railroad 224 stations or stopping points at which it receives and discharges passengers. At 51 of these stations there is a station agent who sells passenger tickets and performs other duties customarily performed by station agents. At 96 of these points the respondent maintains shelters and platforms. At 35 of these points the respondent maintains platforms only. At 42 points certain of the respondent's trains stop at streets or highways, where no facilities or platforms are provided.

(b) The main pasenger station of respondent in Chicago is in a store building having a front width of 25 feet on Wabash Avenue between Adams Street and Jackson Boulevard. This station is connected with the elevated structure of the Chicago Rapid Transit Company by a bridge leading to the elevated platform
92 above the sidewalk. All stations on the elevated structure of the Chicago Rapid Transit Company in Chicago used by the respondent are used in common with the Rapid Transit Company. Respondent conducts no freight business at any of these stations. Several stations used by respondent on its owned line outside of Chicago are in store buildi gs adjacent to track on city streets.

(c) Two stations, with t cket agents, are maintained at Wilmette, Winnetka, and Island Park. At Ravinia the respondent has a station consisting of a good type of small modern brick building, with platforms and canopies. At Central Avenue the respondent's station is separated from the railway track by a portion of paved street and is located in a store building, part of which the respondent leases. It has the ordinary station facilities. At Highwood the respondent has a frame building with ticket agent, platforms, ticket booth, and canopies partly covering the platform. At Lake Forest the respondent maintains a very fine brick and stone station, being equipped with modern facilities. At Zion the respondent maintains a commodious brick station, with a large waiting room for men, a large waiting room for women, and with long platforms on both sides of its track. At Kenosha the respondent has a modern, up-to-date, brick, concrete, and stucco station building with a large waiting room, toilet facilities and rest rooms, and with brick and concrete platforms with canopy over a portion of the platform. On the Skokie Valley line the respondent maintains stations at nine points

which are combined depots and residences for the station or ticket agents, the buildings being five-room bungalows with one additional room adjoining the track being used for station purposes. The employees of the station use the bungalows as dwellings, for which no rent is charged by the respondent.

(d) Freight depots, or buildings used exclusively for receiving and delivering freight, are maintained by the respondent at several of its stations. At Milwaukee there is a freight station of brick construction with sheltered platform to accommodate loading and unloading to or from vehicles. At Evanston there is a freight depot of brick construction used jointly with the Chicago, Milwaukee, St. Paul and Pacific Railroad.

(e) At a number of points on the respondent's line freight stations are maintained to accommodate the respondent's merchandise despatch or less-than-carload freight service. To accommodate this same service the respondent maintains in Chicago a number of receiving stations. A considerable portion of the merchandise despatch traffic is handled in Chicago at the Montrose Avenue station.

(f) The respondent maintains loading and unloading facilities in Chicago, Milwaukee and Racine for the accommodation of its ferry truck service.

9. Offices and shops:

(a) The executive offices of the respondent are located in the Commonwealth Edison Building, 72 West Adams Street, Chicago, Illinois. Its general operating offices are located at Highwood, Illinois.

93 (b) Respondent has repair shops adequate for the maintenance and repair of its rolling stock, its general repair shops being located at Highwood, Illinois.

(c) The 114 freight cars of respondent which are interchangeable with steam railroads are kept in repair at respondent's repair shop at Pettibone yard.

(d) Respondent has not found it necessary to have repairs, either to locomotives or to passenger or freight cars, made at outside shops, but has been able to make all necessary repairs at its own shops.

10. Electrical transmission line:

(a) On the Skokie Valley line overhead power is conveyed by catenary-type trolley lines supported on double standards, permitting high-speed operation.

(b) On the Shore line the trolley wire is suspended from and between wooden poles, and is about 18 feet above the track.

(c) On the tracks of the Chicago Rapid Transit Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad, and on respondent's tracks for about two miles between Howard Street, in Chicago, and Crawford Avenue, in Niles Center, the current is fed by the third-rail system. A portion of the line of the third rail north of Howard Street, has an overhead trolley, in addition to the third rail, for use in connection with the switching of freight for the Chicago, Milwaukee, St. Paul and Pacific Railroad.

(d) Respondent uses 600 volts, direct current, for its power. The electric power of 600 volts used by respondent is substantially less than the voltage used on most electrified sections of steam railroads. The use of higher voltage than 600 on lines that operate over paved streets, as does the respondent, would create a hazardous condition for the public in the event the line broke and the wire dropped.

(e) Six hundred volts, direct current, is sufficient to haul respondent's loaded equipment, and is the same voltage now used by the Pennsylvania Railroad for its entrance into and terminal operations at New York City. On electrified portions of steam lines other carriers use from 1,500 to 11,500 volts, and the Pennsylvania Railroad is changing to 11,000 volts.

11. Investment in road and equipment:

Respondent's investment in road and equipment on December 31, 1930, was $42,438,676.67.

(6) Rolling Stock and Other Mobile Equipment.

1. Locomotives:

(a) Respondent owns a total of 7 electric locomotives. Two of them are electric storage battery locomotives; 5 of them are operated by power transmitted from the trolley wire. Two of these locomotives will haul 1,200 tons per train; 3 will haul
94 600 tons per train, and 2 will haul 400 tons per train. Steam railroads haul several thousand tons in a train. These locomotives weigh 70, 60, and 50 tons, respectively. The lightest weight of electric locomotive used on electrified section of steam railroads shown by evidence is 100 tons, and the heaviest weight as much as 288 tons.

(b) The respondent has, within the past five years, used steam locomotives then owned by it for hauling revenue freight.

2. Merchandise despatch cars:

(a) Respondent uses a baggage type of passenger car in transporting its less-than-carload merchandise despatch freight. Most of these cars are equipped with motors. Some are trailers. The longest car is 50′ 5″. The widest car is 9′ 5½″. The baggage type cars which are wider than 9 feet are not used in the operation into the cities of Chicago and Milwaukee, as a car greater than 9 feet in width can not operate on the tracks used by respondent in either of these cities. The capacity of these cars is from 20,000 to 35,000 pounds. The average capacity of steam railroad freight cars is about 80,000 pounds. The maximum capacity is as high as 145,000 pounds.

(b) Respondent also owns and uses refrigerator cars, similar to the motor merchandise despatch cars.

3. Freight equipment:

(a) Respondent owns 206 freight cars. Of that number 71 are dump cars, 2 are tank cars used for weed killing, 2 are refrigerator cars eqiupped with electric refrigeration not used to carry freight. The dump cars are occasionally used in commercial service for hauling sand, gravel, and stone where necessary to dump such material

along the side of the track or off trestles. Respondent owns 114 freight cars which can be interchanged with steam railroads. The other freight cars are too light in construction to be accepted by steam railroads.

The Chicago, Milwaukee, St. Paul and Pacific Railroad owns an average of 6.29 freight cars per mile of road. The Chicago and Northwestern owns an average of 8.05 freight cars per mile of road. The Minneapolis, St. Paul and Sault Ste. Marie owns an average of 5.06 freight cars per mile of road. Class 1 steam railroads in the United States own an average of 9.7 freight cars per mile of road. The North Shore owns an average of 1.49 freight cars per mile of road.

(b) One hundred and fourteen of respondent's revenue freight cars are interchangeable with steam railroads. These cars have no electrical equipment and are exactly the same as steam railroad freight cars, being identical in equipment, brakes, safety appliances, automatic couplers, and other devices.

(c) Respondent's freight cars have capacities of from 30,000 to 100,000 pounds each. It operates 36 gondolas with capacities of 100,000 pounds each; 52 gondolas with capacities of 80,000 pounds each, and its flat cars will carry maximum loads up to 80,000 pounds each. Eight of the respondent's 10 box cars will load 60,000 pounds each and the remaining two have a capacity of 45,000 pounds each.

95 4. Passenger equipment:

(a) Respondent's passenger equipment consists of 182 units, of which 150 are equipped with motors and 32 are operated as trailers. This equipment includes nine dining cars and five observation-parlor cars.

(b) Respondent's passenger equipment is not interchangeable with steam railroads because of appurtenances for electrical operation and certain departures from the Master Car Builders' Standards.

(c) Of respondent's 182 passenger cars, 90 weigh 100,000 pounds or more and only nine weigh less than 75,000 pounds.

(d) Four of respondent's observation-parlor cars will seat 31 passengers each and the fifth will seat 16 passengers. Its ordinary passenger cars will seat 30 passengers each.

(e) Most of the passenger and baggage car equipment is motorized. A few passenger cars have control apparatus without motors so that they may be placed ahead of motor cars in trains. The widest passenger car used by respondent is 9 feet. The longest car is 56′ ¾″. The narrowest of steam railroad cars shown of record is 10 feet in width and the shortest in length is 72′ 7½″. The passenger equipment of respondent has 4-wheel trucks. The passenger equipment of steam railroads in general use have 6-wheel trucks. The curvatures on the line of respondent are too sharp to permit the operation of cars with 6-wheel trucks. Radial draw bars are used on respondent's cars to permit trains to operate around short curves.

More than 40 passenger cars of respondent are street cars which are used exclusively in street-car operation.

5. Ferry truck or container cars:

(a) The respondent's equipment includes a number of "ferry truck" or container cars, which are hauled from the shipper to the respondent's freight depots by tractors and then carried over respondent's line mounted two to a freight car.

(b) These ferry trucks or container cars are similar to those of the Chicago and North Western Railway and are used for the same purpose.

(7) PUBLICATION OF FREIGHT RATES AND PASSENGER FARES, ANALYSIS OF TRAFFIC HANDLED, AND METHOD OF OPERATION.

1. Tariffs, powers of attorney, and concurrences:

(a) Respondent has on file with the Interstate Commerce Commission a total of 221 effective powers of attorney and concurrences issued by it. It publishes 16 local freight tariffs and participates as initial carrier in 206 freight tariffs, and as a delivering or intermediate carrier in more than 800 freight tariffs, thus providing freight rates in conjunction with steam railroads to and from practically every State in the United States, as well as to points in Canada and Mexico.

96 (b) Through railroad and Pullman tickets are sold at respondent's stations to any part of the United States, Canada, and Mexico.

(c) Published tariffs on file with the Interstate Commerce Commission permit the respondent to sell passenger tickets for trips around the world.

(d) Respondent publishes its freight and passenger tariffs through the same tariff publishing agents used by all steam railroads, and those agents publish many of respondent's rates for the steam roads and for respondent in the same joint tariffs.

(e) In assessing its local passenger fares the respondent uses the same per mile basis as used by all steam railroads, namely, 3.6 cents per mile.

2. Passenger service:

(a) Respondent operates about 40 fast through or limited passenger trains daily between downtown Chicago and downtown Milwaukee, there being 20 of these fast or through trains in each direction daily, in addition to the local and "commuter" trains. These limited trains operate over the Skokie Valley line, with five cars each, drawn by self-propelled units. The running time of these fast trains is one hour and forty-five minutes, equalling the fastest trains of the Chicago and North Western Railway Company, which operates 15 through trains daily between Chicago and Milwaukee.

(b) The respondent and the Chicago and North Western Railway are in direct competition with each other in their through or fast passenger service, their limited service to Waukegan, and their suburban and "commuter" service.

(c) In connection with its passenger service, the respondent operates nine dining cars having seating capacities of 22 to 24 persons per car. These dining cars are used in the through Chicago-Milwaukee morning, noon, and evening trains, and were included as part of respondent's service to compete in passenger service with the Chicago and North Western Railway and the Chicago, Milwaukee, St. Paul and Pacific Railroad between Chicago and Milwaukee.

(d) In addition to its Chicago-Milwaukee limited and local service, the respondent operates a fast or limited service from Chicago to Waukegan on its "Shore line," with stops only at the main stations, and the local service between the same points.

(e) A fast and local service, totalling 16 trains daily, is maintained on the Libertyville branch from Mundelein to Lake Bluff, where connection is made with the "Shore line" trains.

(f) Respondent publishes in its train time schedules connections with the trains of all steam lines, motor bus, and electric lines at both Chicago and Milwaukee, including all the transcontinental roads, both east and west.

97 (g) The fast passenger trains of the respondent running from Milwaukee make convenient connections in Chicago with the Stout Air Lines operating to Detroit, Cleveland, and other eastern cities; also with the Universal Air Lines System to St. Louis and Kansas City; and with the Embry-Riddle Company to Indianapolis and Cincinnati.

(h) Respondent's passenger service is rendered under regulations and fares filed with and subject to the jurisdiction of the Interstate Commerce Commission.

(i) In Milwaukee and Waukegan street-car service is furnished by the respondent, this service being separate and distinct from its other passenger service. Different equipment is used and special State tariffs applied to the local fares charged.

(j) Passengers boarding a limited train without a ticket and paying cash fares are given receipts similar to those used by steam railroads, and if a train is boarded at an agency station, but without a ticket, the passenger is assesed an extra or "penalty" fare, as steam railroads do in such circumstances.

(k) The passenger service of the respondent is performed in comparatively small train units ranging from a single car to 4 or 5 cars per train. There are no single car trains operated by either of the paralleling steam railroads, the Chicago and North Western or the Chicago, Milwaukee, St. Paul and Pacific. Respondent operates 40 passenger trains daily between Chicago and Milwaukee. A substantial part of the main line passenger service of respondent is performed over tracks laid in city streets. The main line trains of the respondent into and out of Chicago run over the elevated structure of the Chicago Rapid Transit Company. The speed of trains of respondent is rigidly restricted at many places by State, city, and village authority. Arbitrary stops are also required by such authority.

Respondent has interline ticket arrangements with steam railroads. In September, 1930, less than 4 per cent of the total passenger revenue was derived from interline passenger business and the remaining 96 per cent from passenger business local to respondent's line.

3. Merchandise despatch service:

The merchandise despatch service is performed by respondent in baggage type cars, most of which are motorized. This service is handled in trains consisting of one or two cars with a total maximum of 5 cars to the train. Respondent maintains several off-line freight stations within Chicago, at which shippers may deliver merchandise freight. The freight from these stations is transported to the rail station in specially built motor trucks. This is called the ferry truck service. The revenue derived from the merchandise despatch service exceeds the revenue derived from all carload freight handled in freight equipment which is interchanged with steam railroads. More than 10 per cent of the total tons of freight handled by respondent is the merchandise despatch or less-than-carload freight.

98 4. Carload freight service:

(a) It is impossible for respondent to handle carload freight in standard railroad freight equipment on 31.47 route miles of track. This is 22.73 per cent of the total route mileage of respondent. Such impossibility is due to clearance conditions and franchise restrictions. Respondent has no interchange track with any steam railroad at Milwaukee or at Chicago, its two principal terminals. The nearest interchange track to Milwaukee with a steam railroad is at Racine, Wisconsin, about 20 miles distant. No freight cars containing less-than-carload freight are interchanged with steam railroads. Respondent has no reciprocal switching arrangement with a steam railroad at either Chicago or Milwaukee, or at any point except Racine, where it has switching arrangement with one steam railroad.

(b) In 1930 the respondent handled approximately 27,000 carloads of freight traffic, 23,0000 or 87 per cent of which were interchanged with connecting steam railroads.

(c) During the month of September, 1930, carload freight traffic was handled by the respondent in cars interchanged with 69 different steam railroads and 31 different private car companies.

5. Methods of operation:

(a) The respondent operates its trains under train rules substantially similar to the Standard Code of Train Rules of the American Railway Association. Its trains are operated under train orders, clearance cards, "meet" orders, changes in orders, rules as to superior and inferior trains, and in many other details as are trains of steam roads. Respondent's train despatching is done by telephone.

(b) Respondent serves industries directly from its line and industrial tracks. These industries receive and load solid cars from and to distant break-bulk points, which are picked up and given line-haul service. The incoming or "interline" freight and distant

points comes in by steam railroad connections of the respondent and is distributed by respondent.

(c) Respondent's methods of business solicitation, its membership in tariff organizations, and in tariffs published and concurred in are national and international in scope.

(d) Respondent's bills of lading, waybills, and interline waybills are the same as those used on steam railroads generally.

(e) Respondent is an associate member of the American Railway Association, a member of the Western Passenger Association, a member of the Bureau for the Safe Transportation of Explosives, and a member of the Western Weighing and Inspection Bureau. These are all regular steam railroad organizations.

(f) Respondent is a subscriber to the Code of Car Service Rules, the Code of Per Diem Rules, the Car Service and Per Diem Rules Agreement of the American Railway Association, the Master Car Builders' Rules, the Interchange Agreement of the American Railway Association, the Official List of Open and Prepay Stations, and the Consolidated Freight Classifications, all being rules entered into and promulgated for steam railroads generally.

99 (g) The track and roadbed of the respondent is maintained by section gangs, the foremen of which are housed in respondent's specially constructed building. The respondent maintains roadway maintenance equipment, consisting of gang or track inspection cars, hand cars, derrick cars, etc.

6. Traffic and revenue:

(a) The passenger fares of the respondent are regulated by and are subject to the jurisdiction of the Interstate Commerce Commission.

(b) For the year 1930 the total freight and express revenues of the respondent were $1,384,547.58.

(c) The classification of commodities prescribed by the Interstate Commerce Commission for compiling freight statistics for steam railroads includes 157 commodities. During the years 1929 and 1930 the respondent did not handle 56 of these commodities. The steam railroads in the same territory handled substantially all of these commodities. Respondent handled practically no livestock, no grain, packing-house products, poultry, or eggs. Respondent has no grain elevators or stockyards on its lines.

Respondent derives 78 per cent of its total revenue from passenger service. Class I steam railroads for the United States derive about 14.7 per cent of their total revenues from passenger service. Respondent derives 22 per cent of its total revenue from freight service, of which the greater part is derived from merchandise despatch service performed in the baggage type of cars. Class I steam railroads derive 76.6 per cent of their revenue from freight traffic. Respondent derives 8.47 per cent of its total revenues from the transportation of interline freight. Class I steam railroads derived more than 65.14

per cent of their total revenues from the transportation of interline freight in 1928.

7. Corporate organization:

The respondent has a corporate set-up similar to steam railroads, having a departmental arrangement consisting of an executive department, operating department, traffic department, law department, and medical department.

Respondent publishes tariffs by which it maintains through routes and joint rates with steam railroads. The law and tariff regulations of the Interstate Commerce Commission require the publication and filing of tariffs by all common carriers by railroad subject to the interstate commerce act.

Exhibits and evidence of record which correctly portray the facts show that 112 electric railways filed tariffs with the Interstate Commerce Commission, which published freight rates applicable locally to those railroads, and that of those railroads 64 participated jointly with steam railroads in interline tariff and 42 participated jointly in interline tariffs with other electric railroads during the year 1919. The Spokane Inland Empire R. R. Company, an electric line, maintained tariffs in 1911 in which it participated generally in
100 interline freight traffic with steam railroads between points throughout the United States. The Southwest Missouri Railroad Company during the years 1927 and 1928 participated generally in interline freight traffic with steam railroads by means of published tariffs.

Respondent operates through a number of cities and towns under rights granted by franchises or ordinances. These restrictions, prohibitions, and obligations are many and varied. In all but 2 of 14 towns through which respondent operates under franchises the operation must be by electricity. In all but 3 such towns steam operation is prohibited. In 5 safety stops are required. In 8 respondent must pave the streets between its tracks. In 7 respondent must stop at street intersections. In 9 respondent must light streets and crossings. In 4 respondent must remove snow. In 2 respondent must sprinkle the streets. In 6 freight operation is prohibited. In 5 respondent must carry policemen and firemen free of charge.

Respondent is required to pay a license fee to the city of Chicago of $50.00 annually for the operation of each car over the elevated structure of the Chicago Rapid Transit Company in Chicago and to keep this license posted within the car. Respondent may, under an ordinance recently enacted by the city council of Chicago and adopted by the people in a referendum vote, operate its trains in the new intracity subway transportation to be constructed within the city of Chicago.

Since July, 1916, when the Chicago North Shore & Milwaukee Railroad, the immediate predecessor of respondent, acquired the

properties, the respondent and predecessors have issued securities aggregating $71,327,200 par value. Of that total, $9,664,600 were issued by the predecessor company prior to March 1, 1920, and the remainder have been issued since that date. All of these securities were issued upon the authority and with the approval of the regulating commissions of Illinois and Wisconsin. There were outstanding in the hands of the public as of April 30, 1931, a total of $42,935,608.07 par value of securities issued by respondent and its predecessors. Of that amount, $4,000,000 in securities were issued prior to March 1, 1920, and $38,935,608.07 were issued since that date. There is in the treasury of respondent or pledged under the first and refunding mortgages a total of $9,291,800 par value of securities. In December, 1930, $2,500,000 par value of securities were issued by respondent upon the authority and with the approval of the regulating commissions of Illinois and Wisconsin. All securities issued by respondent since March 1, 1920, have been reported to the Interstate Commerce Commission in the annual report of respondent filed with that commission. This report requires to be shown, and the respondent has shown, that the securities therein reported were issued under the authority and with the approval of the regulating commissions of Illinois and Wisconsin.

Since March 1, 1920, more than $239,000,000 par value of securities have been issued by electric railroads reporting to the Interstate Commerce Commission other than respondent without the approval or authority of the Interstate Commerce Commission.

101 The Interstate Commerce Commission has prescribed a uniform system of accounts for electric railways, which governs the accounting system of respondent. That commission prescribes a different and more comprehensive classification of accounts for use by steam railroads. In March, 1913, Congress enacted the valuation act, section 19a, of the interstate commerce act, 37 Stat. L. 701, which requires the commission to ascertain and report the value of all property owned or used by every common carrier subject to the provisions of the act. The property of the respondent has not been valued by the commission. The commission has not reported the value of any independently operated electric railroad. The commission has made tentative valuations or final valuations of the property of all steam railroads, subject to the interstate commerce act.

Respondent operates an electric railroad which is engaged in transporting State and interstate commerce between the urban communities of Chicago, Illinois, and Milwaukee, Wisconsin, and intermediate points in Wisconsin and Illinois. Respondent is not owned or controlled by any steam railroad system of transportation. It is not operated as a part of any steam railroad system of transportation. Respondent performs a street-car service, a suburban service, and an interurban service.

Since its organization respondent has been given the status of an interurban electric railway by official acts of construction by the Railroad Commission of Wisconsin, the State regulating body of Wisconsin, and by the Illinois Commerce Commission, the State regulatory body of Illinois. Each of these tribunals has assumed jurisdiction over the securities issued by respondent, of which fact the Interstate Commerce Commission has been apprised in the annual reports of the respondent to that commission. The Interstate Commerce Commission, by its failure to act, and by affirmative recommendations in its annual reports to the Congress of the United States, has given to respondent by contemporaneous construction the status of an interurban electric railway. In its 35th annual report to Congress for the year 1921 the commission made the following recommendation:

"We have no jurisdiction over the issuance of securities of a 'street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation.' Certain electric railways independently operated are engaged in the general transportation of freight in interstate commerce in addition to the transportation of passengers. The use of electricity as motive power for railways is rapidly increasing. Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. Under section 15a of the act we are given authority to include in groups of carriers for rate-making purposes such interurban electric lines as are engaged in the general transportation of freight. It seems desirable that section 20a of the interstate commerce act be so amended as to indicate definitely the classes of electric railway companies subject to that section."

102 The Interstate Commerce Commission repeated that recommendation in its annual reports to Congress for the years 1922 to 1925, inclusive. In its annual report to Congress for the year 1929 the commission made the following comments and recommendation:

"In our annual reports to the Congress for various years since the enactment of the amendments of 1920, we have recommended that section 20a, relating to the issuance of securities, be so amended as to apply to electric railway companies engaged in the general transportation of freight. Experience in the administration of the act, as well as changes in the conditions affecting electric railway companies, seem to require that consideration be given to the general subject of the application of various sections of the statute to those companies."

Thos. recommendations were repeated by the commission in its annual reports to Congress for the years 1929 and 1930.

Respondent has been informed by letter on two occasions since the year 1920 by certain officials of the Interstate Commerce Commission that unless it were advised to the contrary it need not file

returns in response to certain orders made by the commission designed to determine the recapturable income from railroads subject to Section 15a of the interstate commerce act.

The court finds that the various photographs, charts, exhibits, and diagrams introduced in evidence by plaintiff and respondent correctly portray the facts which they are intended to show.

The foregoing findings of fact are based upon the legal and competent evidence produced upon the trial rejecting all improper, irrelevant, and incompetent parts thereof.

CONCLUSIONS OF LAW

The court, upon the foregoing findings of fact, states the following as its conclusions of law:

1. The letter as well as the spirit, of the interstate commerce act as amended by transportation act, 1920, clearly excludes from section 20a of the interstate commerce act, and from other sections thereof, independently operated electric railways. Congress there and elsewhere in the act described these railways as street, suburban, and interurban electric railways not operated as a part of a general steam railroad system of transportation, and by doing so it adopted a descriptive term which had the sanction of time and common usage. Congress used substantially the same description in the Federal control act, the electric railway mail pay act, and in various sections of the transportation act, 1920, and the interstate commerce act. The Supreme Court used the term "interurban electric railway" in Omaha and Council Bluffs Street Ry. Company v. I. C. C., 230 U. S. 324, and in Spokane & Inland Empire
103 R. R. Co. v. U. S., 241 U. S. 344. Among the common characteristics of interurban electric railways, subject to the jurisdiction of the Interstate Commerce Commission unless specifically excluded by the language of certain sections of the interstate commerce act, are that they use electric power in the transportation of passengers or freight or both in intrastate and interstate commerce, occupy city streets and highways in addition to private rights of way, stop cars or trains at street intersections and country highways for the reception and discharge of passengers, maintain loading platforms and shelter sheds, without agents, for passengers, have short radius curves, and operate part of their system under municipal and village franchise authority and restrictions. Respondent has all of these characteristics.

2. The court finds that the respondent is now, and has at all times since its organization been, an interurban electric railway which is not operated as a part of a general steam railroad system of transportation, and that respondent is not now, and at no time since its organization has it been, a "carrier" or "corporation" within the meaning of those terms as defined in section 20a of the

interstate commerce act, and is therefore excluded from the provisions of section 20a of that act.

3. The court finds that the petition should be dismissed.

By the court.

CHARLES E. WOODWARD,
United States District Judge,
Northern District of Illinois.

MARCH 24, 1932.

104 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity, No. 10067

UNITED STATES OF AMERICA, PETITIONER,-

vs.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, respondent

Final decree

March 24, 1932

This cause came on to be heard upon final hearing for a permanent injunction upon the pleadings and evidence and was argued by counsel, and thereupon and upon consideration thereof, it is ordered, adjudged, and decreed

That the petition be, and the same hereby is, dismissed for want of equity.

Dated this 24th day of March, A. D. 1932.

CHARLES E. WOODWARD,
United States District Judge,
Northern District of Illinois.

105 In United States District Court

[Title omitted.]

Notice of Appeal

Filed May 21, 1932

To CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, *Respondent:*

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, United States of America, petition in the above-styled cause, does hereby appeal to the Supreme Court of the United States from the final decree of the District Court entered in said cause March 24, 1932, which said decree dismissed for want of equity the petition of United States praying for

an injunction permanently restraining and preventing respondent, Chicago North Shore & Milwaukee Railroad Company, from issuing any stocks, bonds, or other evidence of indebtedness (collectively called "securities") unless and until it had applied for and obtained the authorization of the Interstate Commerce Commission therefor, as required by section 20a of the interstate commerce act.

GEORGE E. Q. JOHNSON,
United States Attorney.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

Service of the foregoing notice of appeal and receipt of a copy thereof are hereby acknowledged this 19 day of May, 1932.

RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore and Milwaukee Railroad Company, Respondent.

106 In United States District Court

[Title omitted.]

Petition for Appeal

Filed May 21, 1932

United States of America, petitioner in the above-styled cause, feeling itself aggrieved by the final decree entered March 24, 1932, by the District Court in this cause, and desiring to appeal from said decree to the Supreme Court of the United States, pursuant to the provisions of the expediting act, 32 Stat. 823, as amended 36 Stat. L. 854 (U. S. Code, Tit. 49, sec. 45, and Tit. 15, sec. 29) presents herewith its notice of appeal and assignment of errors, and, for the reasons set forth in its assignment of errors, prays for an order of this court allowing said appeal, and for a citation directed to the above-named respondent, Chicago North Shore & Milwaukee Railroad Company, requiring it to be and appear in the Supreme Court of the United States, Washington, D. C., within thirty days after the date of said citation, pursuant to said appeal.

107 And United States of America further prays that a transcript of the record, proceedings, and papers on which said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

GEORGE E. Q. JOHNSON,
United States Attorney.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

Dated at Chicago, Illinois, this 21st day of May, 1932.

108 In United States District Court

[Title omitted.]

Assignment of errors

Filed May 21, 1932

United States of America, petitioner in the above-styled cause, now comes and files the following assignment of errors in connection with its petition for an appeal from the final decree entered by this court on March 24, 1932, in said cause:

1. The court erred in entering the decree dismissing for want of equity the petition of United States of America, petitioner.

2. The court erred in finding and holding that the respondent "is now, and has at all times since its organization been, an interurban electric railway."

3. The court erred in finding and holding that respondent "is not now, and at no time since its organization has it been, a 'carrier' or 'corporation' within the meaning of those terms as defined in section 20a of the interstate commerce act, and is therefore excluded
109 from the provisions of section 20a of that act."

4. The court erred in failing and refusing to find and hold upon the facts of record and upon the facts found by it that respondent is a "carrier" as that term is defined in said section 20a of said act, and in failing to find and hold that respondent is subject to the provisions and requirements of said section 20a.

5. The court erred in failing and refusing to enter the injunction as prayed for by the petitioner.

Wherefore, petitioner, United States of America, prays that the final decree entered March 24, 1932, in this cause dismissing the petition for want of equity, be in all respects reversed and set aside, with directions that the permanent injunction prayed for by United States be granted, and for such other and further relief as may be necessary and appropriate in the premises.

Dated, Chicago, Illinois, May 21, 1932.

GEORGE E. Q. JOHNSON,
United States Attorney.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

Service of the foregoing assignment of errors and receipt of a copy thereof are hereby acknowledged this 19 day of May, 1932.

RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore and Milwaukee Railroad Company, respondent.

110 In United States District Court

[Title omitted.]

Order allowing appeal

May 21, 1932

The above-named petitioner, United States of America, having duly made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree entered in this cause March 24, 1932, by this court, and having also made and filed its assignment of errors, and having in all other respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within thirty days from the date hereof, and the clerk is directed to transmit forthwith to the Supreme Court of the United States a properly authenticated transcript of the record, proceedings, and papers on which said decree was made and entered.

Dated May 21, 1932.

CHARLES E. WOODWARD,
United States District Judge.

111 In United States District Court

[Title omitted.]

Order extending time

June 17, 1932

On motion of United States attorney it is ordered that the time within which to file record and docket this cause in the Supreme Court of the United States be, and the same is hereby, extended twenty (20) days from June 20, A. D. 1932.

112 In United States District Court

[Title omitted.]

Order extending time

July 8, 1932

On motion of United States attorney it is ordered that the time within which to file transcript of record in the United States Supreme Court be, and the same is hereby, extended from July 10, A. D. 1932, to and including July 31, 1932.

113 In United States District Court

[Title omitted.]

Præcipe for transcript of record

Filed July 26, 1932

To the Honorable CHARLES M. BATES,
Clerk of said Court:

Please prepare a transcript of the record in the above case, on appeal to the Supreme Court of the United States, containing the following:

1. Petition (with the two verifications thereto) filed on or about October 3, 1930.
2. Stipulation and order extending time for respondent's answer to November 10, 1930.
3. Answer of respondent filed on or about November 3, 1930, to petition.
4. Stipulation for transcript of record and Court's order approving same.
5. Statement of evidence.
6. Findings of fact and conclusions of law.
7. Final decree of March 24, 1932.

114 8. Notice of appeal and service thereof.

9. Petition for appeal.
10. Assignment of errors and service thereof.
11. Order allowing appeal and service thereof.
12. Citation on appeal, and respondent's admission of service thereof.
13. Order extending time for filing record twenty days from June 20, 1932.
14. Order extending time for filing record from July 10 to July 31, 1932.
15. Præcipe for transcript of record.
16. Docket entries.
17. Clerk's certificate.

GEORGE E. Q. JOHNSON,
United States Attorney,
JOHN LORD O'BRIAN,
The Assistant to the Attorney General,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
Solicitors for United States of America, Petitioner.

Service of the foregoing præcipe for transcript of record and the receipt of a copy thereof are hereby admitted and acknowledged this 22 day of July, 1932.

RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore & Milwaukee Railroad Company, Respondent.

115 In United States District Court for the Northern District of Illinois, Eastern Division

Docket No. 10067

UNITED STATES OF AMERICA

vs.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

For plaintiff: Geo. E. Q. Johnson, U. S. Attorney; William D. Mitchell, John Lord O'Brian, Elmer B. Collins.

For defendant: Ralph R. Bradley.

Date	Filings proceedings
Oct. 3, 1930.	Filed bill and copy.
" " "	Issued process and copy.
" " "	Filed appearance.
" 10 "	" process ret'd served.
" 21 "	" stipulation.
" " "	Woodward, J.—On stipulation time for deft. to answer or otherwise defend extended to and inc. the 4th day of Nov. 30 (draft).
Nov. 3, "	Filed answer of deft. and copy.
" 28 "	" notice.
" " "	Woodward, J.—Cause set for hearing March 9th, 1931, 10 a. m.
Feb. 10, 1931.	Filed notice and copy.
" " "	Enter order changing hearing date from March 9-31 to May 25-31. Woodward, J.
5-25-31.	Opening stmts. hrd. Testy. for U. S. hrd. in part & cont'd to May 26 for further hrg.—(1 wit. sworn for U. S.) Woodward, J.
5-26-31.	Further testmy. for pltf. hrd. & cont'd to May 27.—Woodward, J. (2 wit. sw. for U. S.).
5-27-31.	Further testmny. for pltf. hrd. & concl'd. Testimny. for deft. hrd. in part & hrg. cont'd. to May 28, 1931 (2 wit. sw. for pltf. & 2 wit. sw. for deft.). Woodward, J.
" " "	Filed praecipe & issued 1 subpoena.
5-28-31.	Further testmny. for deft. hrd. & hrg. cont'd to May 29.—Woodward, J.
" " "	Filed pet'n. of C. N. S. & M. Ry.
" " "	Order for subpoena duces tecum to Wm. M. Dinneen.
" " "	Issued subpoena duces tecum.
5-29-31.	Further hrg. cont'd. to June 1, 1931—10 a. m.—Woodward, J.
6-1-31.	Testy hrd. & cont'd to June 2, 1931—10:30 a. m. for further hrg.—Woodward, J. (4 wit. sw. for deft.).
116 6-2-31.	Testimony heard & case cont'd to June 3rd, 1931—10 a. m. for further hearing—(5 wit. sw. for deft.). Woodward, J.
6-3-31.	Testimony heard & deft. rests. No rebuttal. Pltf. rests. Briefs to be submitted & to be set for oral argmt.—Woodward, J. (2 wit. sw. for deft.).
6-4-31.	Filed wit. card of F. J. Geraghty.
6-18-31.	Filed subpoena ret'd served.
8- 8 "	" brief for United States & 3 copies.
3-21-32.	Filed petnr's request for findings of fact.
3-24-32.	Enter findings of fact & concins. of law—Enter final decree—Drafts.—Woodward, J
5-21-32.	Filed notice of appeal.
" " "	" petn. for appeal.
" " "	Enter order allowing appeal to U. S. Supreme Court. Draft.—Woodward, J.
" " "	Filed citation on appeal.
" " "	" assignment of errors.
6-17-32.	Order extdg. time to file record & docket case in Supreme Court 20 days from June 20, 1932—Woodward, J.
7- 8-32.	Mo. to extend time for filing transcript of record to & incldg. July 31, 1932, allowed—Woodward, J.
7-26-32.	Filed narrative statement of evidence.
" " "	" stipulation re: Narrative statement of evidence.
" " "	" praecipe for transcript of record.

117 [Clerk's certificate to foregoing transcript omitted in printing.]

118 [Citation in usual form showing service on Ralph R. Bradley et al. filed May, 21, 1932, omitted in printing.]

119, 120 [Omitted.]

121 IN SUPREME COURT OF THE UNITED STATES

Statement of points to be relied upon and designation of the parts of the record to be printed

Filed Aug. 8, 1932

I

United States of America, appellant, will rely upon the following points in brief and oral argument before this Court on its appeal in the above-entitled cause:

1. The District Court erred in entering the decree dismissing for want of equity the petition of United States of America.

2. The District Court erred in finding and holding that the appellee "is now, and has at all times since its organization been, an interurban electric railway."

3. The District Court erred in finding and holding that appellee "is not now, and at no time since its organization has it been, a 'carrier' or 'corporation' within the meaning of those terms
122 as defined in section 20a of the interstate commerce act, and is therefore excluded from the provisions of section 20a of that act.

4. The District Court erred in failing and refusing to find and hold upon the facts of record and upon the facts found by it that appellee is a "carrier" as that term is defined in said section 20a of said act, and in failing to find and hold that appellee is subject to the provisions and requirements of said section 20a.

II

And the United States of America, appellant, further states that the entire record in this cause as filed in this court is necessary for the consideration of the foregoing points, and that the transcript of record as transmitted by the clerk of the District Court should be printed by the clerk of this court for the hearing in this cause in its entirety, except petitioner's Exhibits Nos. 1, 12 and 46, and respondent's Exhibit No. 26, which exhibits were, pursuant to stipulation by counsel approved by order of the District Court, transmitted to the clerk of this court as part of the record for use in their original form. This designation for printing is made without prejudice to the right of appellant and appellee to refer in their briefs or arguments to any of said original exhibits so
123 transmitted to the clerk of this court by the clerk of the District Court.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

Receipt of a copy of the above statement of points and designation of the parts of the record to be printed is hereby acknowledged this 6 day of August, 1932.

RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore and Milwaukee Railroad Company, Appellee.

[File endorsement omitted.]

124 In Supreme Court of the United States

Stipulation re exhibits

(Filed Aug. 8, 1932)

It is hereby stipulated by and between counsel for the appellant and appellee in the above-entitled cause that petitioner's exhibits Nos. 1, 12, and 46 and respondent's Exhibit No. 26 shall be detached by the clerk of this court from the transcript of record transmitted by the clerk of the District Court, and that said exhibits shall not be printed as part of the record in this court, but shall be retained and made available in their original form as part of the record
125 in this court and may be referred to by the court and by counsel for the parties in their briefs and upon oral argument in said cause.

THOMAS D. THACHER,
Solicitor General,
JOHN LORD O'BRIAN,
The Assistant to the Attorney General,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
Solicitors for United States of America, Appellant.
RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore and Milwaukee Railroad Company, Appellee.

[File endorsement omitted.]

(Indorsement on cover:) File No. 36961. N. Illinois, D. C. U. S. Term No. 264. The United States of America, appellant, vs. Chicago, North Shore and Milwaukee Railroad Company. Filed July 29, 1932. File No. 36961.

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